

Public access to European Parliament, Council and Commission documents

2008/0090(COD) - 30/04/2008 - Legislative proposal

PURPOSE: to amend provisions relating to access to documents.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: the right of access to European Parliament, Council and Commission documents is enshrined in Article 255 of the Treaty, as amended by the Treaty of Amsterdam. Provisions for this right have been set out in Regulation (EC) No 1049/2001. In 2004, following an in-depth review of the Regulation, the Commission concluded that it was working well and as result considered it inappropriate to amend the Regulation in the short term. A number of recent initiatives have, however, required the Commission to reassess its position. Firstly, the “European Transparency Initiative” (a review of the Regulation), secondly the adoption of a Parliamentary [Resolution](#) in April 2006 which asked the Commission to come forward with proposals for amending the Regulation; and thirdly the adoption of the Aarhus Convention concerning access to documents containing environmental information and its interaction with Regulation (EC) No 1049.

CONTENT: the purpose of this proposal is to amend Regulation (EC) No 1049/2001 on the basis of the review process. In short, the Commission proposes the following:

Purpose and beneficiaries: the wording in Article 1 (a) has been slightly modified to clarify the purpose of the Regulation and to grant public access to documents. The right of access will be granted to any natural or legal person, regardless of nationality or State of residence – this approach is consistent with the Aarhus Regulation.

Scope and definitions: the proposal specifies that the Regulation will apply to all documents held by an institution concerning a matter relating to the policies, activities and decisions falling within its sphere of responsibility. In addition a new paragraph has been added clarifying that documents submitted to Courts by parties other than the institutions do not fall within the scope of the Regulation (the recall, the TEU excludes the Court of Justice from the right of access to documents). Access to documents relating to the exercise of investigative powers will also be excluded until the relevant decision can no longer be challenged by an action for annulment or the investigation is closed. During this investigation phase, only the specific rules relating to this field will apply. Thus, information obtained from natural or legal persons in the course of such investigations should continue to be protected after the relevant decision has become definitive. The wide definition of a “document” is maintained.

Exceptions: in order to align the proposed amendments with the Aarhus Regulation, the Commission proposes that the exception seeking to protect the environment (Article 6(2) of the Aarhus Regulation) is added to the Regulation on public access to documents. The proposal also states that the exception seeking to protect commercial interests will not apply to information on emissions. A separate mention is, therefore, made on intellectual property rights. At the same time the Commission has decided to include a new exception aimed at protecting procedures leading to the selection of staff or of contracting parties.

Consultation with Third Parties: a new Article has been introduced that lays down the procedure to be followed where access is requested for documents originating from a Member State. The Member State

must be consulted unless it is clear that the documents shall or shall not be disclosed. In cases where the Member State gives reasons for not disclosing the requested documents – or on relevant similar and specific rules in its national legislation, the institution will deny access to these documents.

Procedural rules: the Commission proposes to extend the time limit for handling a confirmatory application to thirty working days, with a possibility for a further extension by 15 working days. Experience shows that it is almost impossible to handle a confirmatory application within 15 working days. A new paragraph has been added to Article 10 clarifying that, where specific modalities for access are laid in EU or national law, these must be respected.

Active Dissemination: provisions relating to active dissemination have been redrafted in order to grant direct access to documents, which are part of procedures leading to the adoption of EU legislative acts or non-legislative acts of general application. Such documents should be made accessible by the institutions from the outset, unless an exception to the public right access clearly applies.