

Public access to European Parliament, Council and Commission documents

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The Committee on Civil Liberties, Justice and Home Affairs adopted a report by Michael **CASHMAN** (PES, UK) amending the proposal for a regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (recast).

The main amendments – made in 1st reading of the codecision procedure – are as follows:

Purpose: Members added that the purpose of the legislation includes setting up other tools such as public registers and specific administrative procedures ensuring the easiest possible exercise of the right of access shall be established.

Scope: the report contains separate clauses for scope and beneficiaries. These had previously been merged under the Commission proposal. The Regulation will apply to all documents held by an institution, that is to say documents drawn up or received by it and in its possession, in all areas of activity of the EU. Documents shall be made accessible to the public either in electronic form, in the OJ, or in an official institution's register, or following a written application. The documents drawn up or received in the course of a legislative procedure shall be made directly accessible in accordance with the text. The Regulation shall be without prejudice to enhanced rights of public access to documents held by the institutions which might follow from instruments of international law or acts of the institutions implementing them or by the Member States' legislation.

Beneficiaries: Members added that beneficiaries are any association of legal or natural persons as well as any natural or legal person.

Definitions: the report broadened the definition of “document” from that proposed by the Commission. It also inserted definitions for “classified document”, “legislative documents”, non-legislative documents”, and “administrative document”. A detailed list of all the categories of the acts covered by these definitions will be published in the OJ and on the Internet sites of the institutions. The institutions shall also agree and publish their common criteria for archiving. The committee also inserted definitions for “archive” and “historical archive”.

Classified documents: the committee inserted a new article on classified documents, stating that an institution shall classify a document where its disclosure would undermine the protection of the essential interests of the EU or of one or more of its Member States. Information will be classified as follows: “EU top secret”, “EU secret”, “EU confidential” and “EU restricted.” Guidelines on definitions of these terms are inserted, and the new article describes responsibility for classification, etc. The European Parliament shall have access to classified documents through a special oversight committee composed of members appointed by its Conference of Presidents. These Members shall comply with a specific clearance procedure and solemnly swear not to reveal in any way the content of the information accessed.

The Article on treatment on sensitive documents is deleted.

General exceptions to the right of access: the committee modified this article, differentiating between protection of public and private interests. It also excluded from the exceptions, legal advice in connection with procedures leading to a legislative act or a non-legislative act of general application. Documents the disclosure of which would pose a risk to environmental protection values, such as the breeding sites of

rare species, shall only be disclosed in conformity with Regulation (EC) No 1367/2006 on the Aarhus Convention. The exceptions shall not be interpreted as referring to information of public interest relating to the beneficiaries of EU funds that is available within the framework of the financial transparency system.

Consultation of third parties: the committee modified this clause and stated that as regards third-party documents, they shall be disclosed by the institutions without consulting the originator if it is clear that none of the exceptions in the Regulation are applicable. A third party shall be consulted if that party has requested, when handing in the document, that it be treated in a specific way, with a view to assessing whether an exception provided for in this Regulation is applicable. Documents provided to the institutions for the purpose of influencing policy-making should be made public.

Further amendments are made to provisions regarding **documents originating in a Member State** and Members inserted a **new clause on legislative transparency**. This provides, inter alia, that during the legislative procedure, each institution or body associated in the decision-making process shall publish its preparatory documents and all related information, including legal opinions, in a special series of the Official Journal of the European Union as well on a common Internet site reproducing the lifecycle of the procedure concerned.

Processing of initial applications: this article is amended to state that in the event of a refusal, where the applicant calls into question whether any actual harm will be caused to the relevant interests and/or argues that there is an overriding interest in disclosure, the applicant may request the **European Ombudsman** to give an independent and objective view on the question of harm and/or overriding public interest.

Time limits: most time limits are modified to 15 working days.

Registers: Members modified this clause, stating that it is unnecessary and impractical to register everything that falls within the broad definition of "document". The new text lays down principles as to what kinds of documents must be registered and requires each institution to adopt and publish more specific internal rules to implement those principles.

Direct access in electronic form: the institutions shall establish a common interface for their registers of documents, and shall ensure a single point of access for direct access to documents drawn up or received in the course of procedures for the adoption of legislative acts or non-legislative acts of general application.

Information officer: a new clause is inserted providing that each directorate-general within each institution shall appoint an Information Officer who shall be responsible for ensuring compliance with the provisions of the Regulation and good administrative practice within that directorate-general.

Sanctions: another new clause provides for sanctions in case of failure to comply with the obligations under the Regulation.

Administrative practice in the institutions: the committee made reference to the principles of transparency and good administration and stated that the institutions shall agree on common implementing rules for the presentation, classification, declassification, registration and dissemination of documents.

Furthermore, the institutions shall inform citizen about their **organisational chart** by indicating the remit of their internal units, the internal workflow and indicative deadlines of the procedures falling within their remit, to which services may citizens refer to obtain support, information or administrative redress.

The institutions shall establish an interinstitutional **Article 255 committee** to exchange best practice, identify access and usability barriers and unpublished data sources, address possible conflicts, promote

interoperability, re-use and merger of registers, standardise document coding through a European standards organisation, create a single EU portal to ensure access to all EU documents and discuss future developments.

Report: a report on the implementation of the Regulation should be presented.