

# Public access to European Parliament, Council and Commission documents

2008/0090(COD) - 11/03/2009 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted by 439 votes to 200, with 57 abstentions. under the first reading of the codecision procedure, amendments to the proposal for a regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (recast).

However, at the request of the rapporteur (Michael CASHMAN, PES, UK), the vote on the draft legislative resolution was postponed and the matter was referred back to the Civil Liberties Committee. The rapporteur requested the President to ask the current and subsequent Council Presidencies to open a formal dialogue with Parliament.

The main amendments to the proposal were as follows:

**Purpose:** the institutions covered by the legislation will include the European Parliament, Council and Commission as well as of all the Agencies and bodies created by those institutions. Members add that the purpose is to promote transparent as well as good administrative practice in the institutions in order to improve access to their documents

**Scope:** Parliament added 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. 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. This Regulation shall not apply to documents covered by Article 4 of the Statute for Members of the European Parliament. In order to ensure that the principle of institutional transparency is fully applied, free public access to documents concerning infringement mechanisms and proceedings should be guaranteed.

**Definitions:** Parliament 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", "archive" and "historical archive". 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.

**Classified documents:** Parliament 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. Documents relating to legislative procedures shall not be classified; implementing measures shall be classified before their adoption insofar as the classification is necessary and aimed at preventing an adverse effect on the

measure itself. International agreements dealing with the sharing of confidential information concluded on behalf of the EU or of the Community cannot give any right to a third country or international organisation to prevent the European Parliament from having access to confidential information.

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:** Parliament 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; and the objectivity and impartiality of public procurement procedures until a decision has been taken. The exceptions apply unless there is an overriding public interest in disclosure. The amended provisions give guidelines on the interpretation of public interest, and add that the definition of an overriding public interest in disclosure shall take due account of: the protection of the political activity and independence of Members of the European Parliament. 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. **Personal data** shall not be disclosed if such disclosure would harm the privacy or the integrity of the person concerned. Such harm shall not be deemed to be caused under certain specified circumstances.

**Consultation of third parties:** Parliament stated that third-party documents 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.

Where an application concerns a **document originating from a Member State** which has not been transmitted by that Member State in its capacity as a member of the Council, or which does not concern information submitted to the Commission concerning the implementation of EC policies and legislation, the authorities of that Member State shall be consulted.

**Principle of good administration:** a new provision is inserted, and states that the institutions shall on the basis of the code of good administrative behaviour publish general guidelines on the scope of the obligations of confidentiality and professional secrecy set out in Article 287 of the EC Treaty, the obligations arising from sound and transparent administration and the protection of personal data in accordance with Regulation (EC) 45/2001. These guidelines shall also define the sanctions applicable in the event of failure to comply with the Regulation in accordance with the Staff Regulations and in the institutions' internal rules

**Legislative transparency:** a further new article details the principles of legislative transparency and states, inter alia, that documents relating to their legislative programmes, preliminary civil society consultations, impact assessments and any other preparatory documents linked to a legislative procedure shall be accessible on a user-friendly inter-institutional site and published in a special series of the Official Journal.

**Administrative transparency practice in the institutions:** this clause is substantially amended and states, inter alia, that in order to ensure that the principles of transparency and good administration are effectively applied, the institutions concerned shall agree on common implementing rules and procedures

for the presentation, classification, declassification, registration and dissemination of documents. 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 on public access to documents. In addition, a new provision on **financial transparency** provides that information relating to the EU budget, its implementation and beneficiaries of EU funds and grants shall be public to citizens.

**Direct access to documents:** the institutions shall establish a common interface for their registers of documents, and 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.

**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. While waiting for the delivery of the European Ombudsman' opinion, the time-limit for making a decision (15 working days) shall be suspended for a maximum of 30 working days.

**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.

**Report:** at the latest by 6 months after entry into force of the Regulation, the Commission shall publish a report and make recommendations including proposals for the revision of the Regulation which are necessitated by changes in the current situation and an action programme of measures to be taken by the institutions.