Public access to documents (Rule 104(7)) for the years 2009-2010

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The Committee on Civil Liberties, Justice and Home Affairs adopted an own-initiative report drafted by Heidi HAUTALA (Greens/EFA, FI) on public access to documents (Rule 104(7)) for the years 2009-2010.

Members recall that **transparency is the general rule** and that with the Lisbon Treaty (and accordingly, with the acquisition of binding legal force for the EU Charter of Fundamental Rights) it became a legally binding fundamental right of the citizen, so that **any decisions denying access to documents must be based on clearly and strictly defined exceptions** founded on sound arguments and reasonably explained , allowing citizens to understand the denial and to use the legal remedies available to them effectively.

Revision of Regulation (EC) No 1049/2001: the committee considers it necessary to revise Regulation (EC) No 1049/2001 in order to **clarify some of its provisions, precisely define and narrow its exceptions** and ensure that these exceptions do not undermine the transparency granted by the Treaties and the Charter. It sees that this revision should strengthen the right of access to documents, without in any way reducing the existing standards for the protection of that right, and take into consideration the case-law of the Court of Justice. Members stress in this context that the revised Regulation should be simple and accessible to citizens, to enable them to effectively use their right.

Members consider that the Commission's proposal of 2008 for amending Regulation (EC) No 1049/2001 does not improve the Union's transparency to the level required by the Lisbon Treaty but, on the contrary, that many of the amendments proposed by the Commission actually reduce the existing level. In particular, they consider that the amendment which substantially restricts the definition of 'document' in comparison with the status quo, is contrary to the Lisbon Treaty. The Commission is called upon to present a revised proposal for a revision of Regulation (EC) No 1049/2001 which would take full account of the requirements for greater transparency enshrined in the Lisbon Treaty, stated in the case-law of the Court of Justice and expressed in the previous work of Parliament.

Common rules for the classification of documents: the report recalls that Article 9 of Regulation (EC) No 1049/2001 on sensitive documents is a compromise that does not reflect any more the new constitutional and legal obligations after the Lisbon Treaty. Stressing that the current system of classification functions only on the basis of interinstitutional agreements and is prone to **over-classification**, Members call for common rules of classification in the form of a regulation.

Improving transparency: the Council is invited to review its rules and increase transparency as regards legislative procedures of the working groups and internal Council bodies by providing at least the calendars, agendas, minutes of the discussions, documents examined, amendments, the documents and decisions approved, the identity of the Member States' delegations and lists of members, without prejudice to the possibility of the use of exemptions listed in Article 4(1) of Regulation (EC) No 1049 /2001. Members call on the Council to make the decisions of such bodies accessible to the public and they oppose the use of 'limited' documents as well as the practice of unregistered documents, such as room documents.

Members believe that, in order to make the legislative process more accountable, comprehensible and accessible to the public, **Parliament's committees** should in all cases adopt, at least, orientation votes prior to entering into **trialogues** with the Council. The Council, for its part, should adopt 'general

approaches' or approve negotiating positions agreed in Coreper prior to entering into trialogues with the Parliament, with all such Parliament and Council documents immediately made public.

The Commission is called upon to make publicly available agendas, minutes and declarations of interest relating to expert groups, and names of members, proceedings and votes of the 'comitology' committees, as well as all of the documents considered by such groups and committees, including draft delegated acts and draft implementing acts. Parliament should adopt a more transparent and open procedure, including internally, to deal with these documents.

The report reiterates the importance of the **principle of traceability**, so to ensure that citizens can know how public money is allocated and spent, and with what results, and calls on the

EU institutions to apply this principle in relation to the running of the institution and to policies and the funds allocated to implement them, at all levels.