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

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The European Parliament adopted a resolution on public access to documents (Rule 104(7)) for the years 2009-2010.

Access to documents as a fundamental right : Parliament recalls that 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.

In accordance with the best international standards developed by major non-governmental organisations the resolution highlights the need for a strict three-part test to be used in order to justify a refusal to disclose a document: (1) the information contained in the document must relate to a legitimate aim listed in the legislative act, (2) the disclosure of the document must threaten substantial harm to that aim, and (3) the harm to the aim must be greater than the public interest in having the information contained in the document.

Revision of Regulation (EC) No 1049/2001: Parliament 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 effectively to 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, as 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 resolution 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. The Council is asked to grant Parliament full access to classified documents connected with international agreements.

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 using the 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.

Parliament emphasises that **trialogues and the conciliation procedures** (as explicitly listed in Article 294 TFEU) are a substantial phase of the legislative procedure, and not a separate 'space to think'. It believes especially that the current procedures as regards trilogues prior to a possible first reading agreement fail to ensure a satisfactory level of legislative transparency and access to 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, dealing with these documents.

Members also reiterate 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. They call 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.

Data protection and transparency : the resolution highlights the need to establish an appropriate equilibrium between transparency and data protection, as made clear by the Bavarian Lager case-law, and stresses that data protection should not be 'misused', in particular, for the purpose of covering conflicts of interest and undue influence in the context of EU administration and decision-making.

Arhuus Convention: Parliament calls on all EU institutions, bodies, offices and agencies to apply Regulation (EC) No 1049/2001 in a way coherent with the provisions of the Aarhus Convention. In this regard, it calls on the Commission to make public the conformity-checking studies regarding transposition of EU environmental directives and calls on the European Chemicals Agency (ECHA) to apply the REACH Regulation with regard to electronic public access, to only accept confidentiality claims that are clearly justified as valid and to interpret strictly the information that is normally deemed to undermine the protection of commercial interests.

Good governance: the resolution reiterates that Parliament should be at the forefront of the proactive approach on publicity, transparency, openness and access to documents. Emphasising the current lack of coherent administrative law for EU institutions, bodies, offices and agencies, Members call, therefore, on the EU institutions to define a common EU administrative law. The Council and Commission are asked to negotiate with Parliament on amending the joint declaration on the codecision procedure and the interinstitutional agreement on better law-making to this end.