Public access to European Parliament, Council and Commission documents

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The purpose of this report is to attempt to produce an initial qualitative evaluation of the application of Regulation 1049/2001 in the light of the principles of the transparency policy pursued by the Community institutions. It emerges from the annual reports that the number of applications doubled in 2002 compared with the previous year, during which the institutions applied the old system of access to their documents. The provisional figures for 2003 indicate another considerable increase in demand. Despite this growing number of documents requested, the rate of positive responses remains stable. In addition, the number of documents made directly accessible is constantly growing. There is thus a substantial increase in the number of documents made available to the general public. This report intends to answer this question using a detailed analysis of the way in which the three institutions concerned applied each of the provisions in Regulation 1049/2001. The analysis is essentially based on the practical experience of the relevant departments within the three bodies. It is still too early to assess the Regulation in the light of case law and the decisions of the European Ombudsman. Two years after the implementation of the Regulation, only one ruling had been issued by the Court of First Instance and eleven complaints had been resolved by the Ombudsman. The report evaluates to what extent the Regulation has permitted the achievement of the objective of granting the widest possible access to the documents of the Community institutions and of thus ensuring better information and increased participation of citizens in the decision-making process. - The report observes that while the right of access does not extend to the documents of all the Community bodies, it does cover a growing number of institutions and bodies. Regulation 1049 /2001 now applies to the agencies, while institutions and bodies not covered by Article 255 of the Treaty, with the exception of the Court of Justice, have all adopted rules on access on a voluntary basis. The Regulation on the application to the EC institutions and bodies of the provisions in the Convention of Arhus will extend the right of access to the environmental information held by all the Community institutions and bodies. Lastly, the draft Constitutional Treaty drawn up by the Convention provides for a right of access "to documents of the Union institutions, bodies and agencies". Thus there is a real prospect that the right of access to documents will apply generally in all Union organisations. However, this development will not put an end to the distinction between Union citizens and residents on the one hand, and, on the other, citizens of third countries not residing in a Member State or legal persons not established on Community territory. The Convention of Arhus does not make this distinction, but the draft Constitution does. In a bid to ensure both equity and clarity, it would be desirable to abolish this difference of treatment on a voluntary basis. - the report also states that the scope should be clarified : the Regulation provides a very broad definition of the concept of "document" but does not specify the contours. It does not containany criteria relating to the degree of officialisation of documents, with informal messages thus having the same status as official records. Moreover, the Regulation does not state either what the concept of institution covers. Parliament clarified the concept of "Parliament document" in its rules of procedures, thus delimiting the scope of the Regulation as regards documents from political groups and individual members not holding a mandate from the institution. - concerning the application of the system of exceptions : the exceptions correspond to the usual limits on the right of access as featured in most national laws. In practice, it turns out that only a few exceptions were invoked regularly. They concerned protection of: public security and international relations, invoked by the Council in the context of activities under the second and third pillars; court proceedings and legal advice; the internal decision-making process; inspections, investigations and audits, invoked only by the Commission. The global rate of positive replies for 2002 ranged from 70% to 98%. The rates of positive replies vary from one institution to another, but the figures are not easy to compare. Since the percentages of positive replies for the Council and Commission concern only documents that were not yet accessible, this means that a considerable number of additional documents have been placed in the public domain because of the Regulation. The application of the exception relating to the protection of "personal data" is a delicate

matter because of the interlinking of Regulation 1049/2001 and the Regulation on the protection of personal data (45/2001). The decision-making process is not protected in the same way as the other interests covered by Article 4 of the Regulation. The requirement of "seriously undermining" the process appears to be excessive. In addition, environmental protection is not a reason for refusing access under Regulation 1049/2001. Given the forthcoming application of the Convention of Arhus to the Community institutions, a specific exception should be made, such as the one in the Convention. More generally, in the light of experience and in a bid to ensure clarity, it would be a good thing to provide for specific exceptions covering certain well-defined cases. - workload generated by the practical implementation of the Regulation : it is important that the institutions allocate the resources needed to ensure the proper implementation of the Regulation on access to documents. The very principles of access to documents and of transparency will be undermined if the appropriate resources are not made available. It is not simply a question of allocating the necessary human and material resources, but also of ensuring the training and information of the persons concerned. Access to documents is a horizontal activity which involves a large number of people working at the institutions. Moreover, the Regulation does not explicitly address the problem of very long, repetitive, unfair or unreasonable applications. While it might be rather dangerous to define this type of application, it would be advisable to prevent the disproportionate burden generated by certain applications from penalising citizens submitting applications in good faith for access to documents because of a genuine need for information. Since the possibility of invoicing copying andpostal charges is only a limited disincentive, the concept of proportionality, already enshrined in case law, should be refined when it comes to granting partial access by removing parts of documents to which the exceptions do not apply. - place of the Regulation in public information policy : the objective of Regulation 1049/2001 is to make the work of the institutions more transparent and hence to bring them closer to the public. Experience tends to confirm, however, that specialists in European affairs were the main people to benefit, and that it cannot therefore be regarded as a special instrument of information for the public. Looking for a Community institution's unpublished documents implies, in fact, that the applicant is familiar with the Union's powers and activities. Consequently, there is still a lot of work to be done as regards informing the general public, in two ways: people must be kept more abreast of the Union's activities by means of an active information policy, and they must be aware of their right to obtain access to the documents of the institutions. - recourse to the Regulation with a view to exercising specific rights of access : the objective of Regulation 1049/2001 is to make documents accessible to the public, disclosure of which will not harm the public interest or specific private interests. It is not intended to determine the conditions under which certain people can obtain special access to documents that cannot be disclosed to the general public. However, experience has shown, particularly at the Commission, that the Regulation has sometimes been invoked to obtain such special access. In conclusion, Regulation 1049 /2001 has been applied for two years and no problems have arisen during implementation that would justify amending legislation for the time being. However, further experience is needed and significant case law must be developed before considering any amendment of texts regulating public access to documents. Given the analysis of the application of the Regulation and the conclusions which it is possible to draw at this juncture, an initial series of actions could be carried out in the short term to consolidate the public access right and to incorporate it further into a public information policy. The report suggests the following short-term actions : - recommendation to adapt rules of access to those of Regulation 1049 /2001; - recommendation to extend the right of access to all natural and legal persons, irrespective of nationality or residence; - development of the registers and of direct access to documents; - development of other information tools; - strengthening interinstitutional cooperation; - appropriate training for officials responsible for access to the documents of the agencies and other institutions. Lastly, the report highlights longer-term actions such as taking stock of all the sectors in which specific rules on access to files for persons with special interests are lacking or insufficient. The shortcomings in these measures would subsequently have to be remedied.