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EUROPEAN COMMISSION

Brussels, 21.3.2011
COM(2011) 137 final

2008/0090 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Regulation (EC) No 1049/2001 regarding public access to European
Parliament, Council and Commission documents**

EXPLANATORY MEMORANDUM

1. The Commission submitted a proposal for recasting Regulation (EC) No 1049/2001 on 30 April 2008¹. The European Parliament voted a report containing a great number of amendments, but decided not to take a vote on the accompanying legislative resolution. As a result, there is no position of the European Parliament at first reading.
2. Following the European elections of June 2009, the newly elected Parliament resumed its work on the legislative proposal in accordance with Rule 214 of its Rules of Procedure. An amended draft report was circulated within the European Parliament in May 2010. The Constitutional Affairs committee and the Petitions Committee of the European Parliament have delivered their opinions on the proposal of the Commission on 30 November and 1 December 2010, respectively. The Civil Liberties Committee has not yet adopted a draft report. No date has been set for the adoption of the position of the European Parliament at first reading.
3. The Treaty of Lisbon has entered into force on 1 December 2009. The legal base for public access to documents is now Article 15(3) of the consolidated version of the Treaty on the Functioning of the European Union. This new provision extends the public right of access to documents of all the Union institutions, bodies, offices and agencies. The Court of Justice, the European Central Bank and the European Investment Bank are subject to this provision only when exercising their administrative tasks. The present Regulation only directly applies to the European Parliament, the Council, and the Commission. However its application has been extended to the agencies by virtue of a specific provision in their respective founding acts. Furthermore, a number of institutions and bodies have adopted voluntary acts laying down rules on access to their documents which are identical or similar to Regulation (EC) No 1049/2001.
4. With a view to taking into account this extension of the institutional scope of the public right of access, the Commission has included its proposal of 30 April 2008 for a recasting of Regulation (EC) No 1049/2001 in its Communication on the Consequences of the entry into force of the Treaty of Lisbon for ongoing inter-institutional decision-making procedures². The co-legislators could, therefore, integrate this adjustment to the new Treaty in the course of the ongoing ordinary legislative procedure.
5. More than one year after the entry into force of the Treaty of Lisbon, there is still no perspective for the adoption of a new Regulation regarding public access to documents that will replace Regulation (EC) No 1049/2001. The discussions in the European Parliament and the Council have shown strongly diverging views about amending the Regulation.
6. Even if, in practice, most institutions, bodies, offices and agencies of the European Union apply Regulation (EC) No 1049/2001 or similar rules on a voluntary basis,

¹ COM(2008) 229

² COM(2009) 665

there is a legal obligation to extend the right of access to all of them in compliance with the Treaty.

7. Since most of the institutions, bodies, offices and agencies of the European Union apply the Regulation or similar rules, the institutional scope of the current Regulation can be extended to all of them, subject to the limits provided for by the Treaty regarding the Court of Justice, the European Central Bank and the European Investment Bank.
8. The Commission considers, therefore, that Regulation (EC) No 1049/2001 should be amended in view of extending its institutional scope in compliance with the new legal basis for access to documents provided for under Article 15(3) of the Treaty on the Functioning of the European Union without further delay. This amendment does not prejudice the ongoing procedure for a recast of Regulation 1049/2001 on the basis of the Commission's proposal from April 2008.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 15(3) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The general principles and the limits on grounds of public or private interests governing the public right of access to documents have been laid down in Regulation (EC) No 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents³, which was adopted on the basis of Article 255(2) of the Treaty establishing the European Community.
- (2) In accordance with that Article, Regulation (EC) No 1049/2001 only governs the public right of access to documents of the European Parliament, the Council and the Commission.
- (3) Following the entry into force of the Treaty of Lisbon, Article 255 of the Treaty establishing the European Community was replaced with Article 15(3) of the Treaty on the Functioning of the European Union.
- (4) The new provision grants any citizen of the Union and any natural or legal person residing or having its registered office in a Member State a right of access to documents of the Union institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions defined by the legislator in accordance with that Article. However, as regards the Court of Justice of the European Union, the European Central Bank and the European Investment Bank, this public right of access applies only when they exercise their administrative tasks.
- (5) Regulation (EC) No 1049/2001 should therefore be amended accordingly,

³ OJ L 145 of 31.5.2001, p. 43.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1049/2001 is amended as follows:

1. In Article 1, point (a) is replaced by the following:

"(a) to define the principles, conditions and limits on grounds of public or private interest governing the right of public access to documents of the institutions of the European Union, as defined in Article 3 (c), provided for in Article 15(3) of the Treaty on the Functioning of the European Union in such a way as to grant the public the widest possible access to documents,"

2. In Article 2, paragraph 3 is replaced by the following:

"3. This Regulation shall apply to all documents held by an institution, as defined in Article 3 (c), that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union. As regards the Court of Justice of the European Union, the European Central Bank and the European Investment Bank, this Regulation shall apply only when they exercise their administrative tasks."

3. In Article 3, the following point (c) is added:

"(c) 'institutions' shall mean institutions, bodies, offices and agencies of the European Union, including the European External Action Service."

Article 2

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President