COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.4.2008
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2008/0090 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

regarding public access to European Parliament, Council and Commission documents

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. BACKGROUND

1.1. Implementation of the public right of access to documents

Article 255 of the Treaty establishing the European Community, as amended by the Treaty of Amsterdam, grants citizens of the European Union and natural or legal persons residing or having their registered office in a Member State, a right of access to European Parliament, Council and Commission documents. The principles and limits governing this right of access have been determined by Regulation (EC) No 1049/2001[1] regarding public access to European Parliament, Council and Commission documents, which became applicable on 3 December 2001.

In a report on the implementation of the Regulation, published on 30 January 2004, the Commission concluded that it had worked remarkably well. Therefore, it considered that there was no need to amend the Regulation in the short term, since it would in any case need to be reviewed after the entry into force of the Treaty establishing a Constitution for Europe.

1.2. Reasons for reviewing the existing Regulation

On 9 November 2005, the Commission decided to launch the "European Transparency Initiative"[2], a drive towards more transparency which included a review of the Regulation.

The European Parliament for its part, in a Resolution adopted on 4 April 2006[3], asked the Commission to come forward with proposals for amending the Regulation.

In the meantime, on 6 September 2006, the European Parliament and the Council adopted a new Regulation applying the Århus Convention[4] to the institutions and bodies of the European Community, which interacts with Regulation (EC) No 1049/2001 as regards access to documents containing environmental information.

Regulation (EC) No 1049/2001 has now been applied for six years, during which the institutions have gained more experience in implementing it. Furthermore, a body of case law has developed and a number of complaints have been settled by the European Ombudsman. The institutions are, therefore, in a position to reassess the working of the Regulation and to amend it accordingly.

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1 OJ L 145, 31.5.2001, p. 43.

2 Minutes of the Commission's meeting No 1721 of 9 November 2005, item 6; see also documents SEC(2005) 1300 and SEC(2005) 1301.

3 P6_A(2006) 052.

4 Convention on Access to Information, public Participation in Decision-making and Access to Justice in environmental Matters, done at Århus, Denmark, on 25 June 1998.
Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Århus Convention to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13).

As a first step in the review process, the Commission published on 18 April 2007 a Green Paper, which formed the basis for a public consultation on the issue[5]. The outcome of this consultation was summarised in a report published in January 2008.

2. ISSUES CONSIDERED IN THE REVIEW PROCESS

2.1. Resolution of the European Parliament of 4 April 2006

In its above-mentioned Resolution of 4 April 2006, Parliament formulated five recommendations, which the Commission has duly considered when drafting the present proposal.

2.1.1. Scope of the legal basis and purpose of the Regulation

According to Parliament, the preamble of the Regulation should clarify that Article 255 EC Treaty is the legal basis for implementing the principles of openness and proximity and the pivotal legal basis for transparency and confidentiality.

Since Article 255 concerns public access to documents, the Commission proposes to clarify the purpose of the Regulation accordingly in Article 1.

2.1.2. Full legislative transparency

All preparatory documents to legal acts should be directly accessible to the public.

This recommendation is fully accepted and addressed in Article 12.

2.1.3. Rules on confidentiality

Parliament recommended laying down rules for classification of documents in the Regulation and ensuring parliamentary control over the application of such rules and access to such documents.

Classification of documents does not per se exclude them from the public right of access. Therefore, the Commission considers that specific rules on classification and on the handling of classified material should not be laid down in a Regulation on public access.

2.1.4. Access to Member State documents

Parliament wanted to limit and to better define the ability of Member States to oppose disclosure of their documents.

The new Article 5(2), which also takes into account a judgment of the Court of Justice on this issue, stipulates that Member States must give reasons when they request an institution not to disclose documents originating from them.

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[5] Green Paper "Public Access to Documents held by institutions of the European Community - A review" - COM(2007) 185.

2.1.5. Registers and rules for archiving

Parliament recommends setting up a single access point in regard to preparatory legislation, a common interface to the institutions' registers and common rules on archiving documents.

The Commission fully agrees with this recommendation. However, it can be implemented without amending the Regulation.

2.2. Outcome of the Public Consultation

The response to the questions submitted for public consultation may be summarised as follows[6]. In the present proposal, the Commission has taken into account the views of the majority of the respondents for each of the issues raised in the Green Paper.

2.2.1. Active dissemination

Registers and websites should be easier to access and more harmonised. The scope of the Commission's registers should be extended. Citizens would welcome a more pro-active disclosure policy.

Active transparency on legislation is being addressed in Article 12. Article 11 and the amended Article 12 provide an appropriate legal basis for registers and websites that are more comprehensive and easier to access.

2.2.2. Aligning Regulation (EC) No 1049/2001 with the Århus Convention

The proposal to align the Regulation with the provisions on access to environmental information (Regulation (EC) No 1367/2006 implementing the Århus Convention) has been widely supported. Reservations were voiced mainly by environmental NGOs and by the chemical and biotechnological sectors.

The alignment is reflected in the amended Articles 4 (1) and (2) and 5 (2).

2.2.3. Protection of personal data

The current practice, blanking out names and other personal data in documents to be disclosed, has been perceived as too restrictive, in particular where persons act in a public capacity. The Court of First Instance has ruled on this issue (see point 2.3.1 below).

The relevant provision has been redrafted accordingly in the new Article 4(5).

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[6] A full report on the outcome of the consultation has been published on 16 January 2008 in a Commission Staff Working Document - SEC(2008) 29; all contributions are posted on the dedicated website http://ec.europa.eu/transparency/revision/index_en.htm

2.2.4. Protection of commercial interests

Public authorities and the corporate sector feel is that the current rules strike the right balance. However, journalists, NGOs and a majority of individual citizens claim that more weight should be given to the interest in disclosure.

Therefore, the Commission does not propose to amend this provision.

2.2.5. Handling of excessive requests

A slight majority of Member States and the private sector support specific measures derogating from the normal rules when dealing with excessive requests. Member States insist that such measures should be based on objective criteria. The Ombudsman, a significant minority of Member States and NGOs are opposed to specific rules on excessive requests.

The Commission does not propose a provision for rejecting requests that may be qualified as excessive. Instead, it is proposed to extend the ability to request clarifications under Article 6(2) to cases where the requested documents cannot be easily identified.

2.2.6. The concept of "document"

As regards the general feeling is that the current wide definition should be maintained. A clarification with regard to databases as suggested in the Green Paper would be welcomed.

A more precise definition of "document" is given in the amended Article 3(a), which also covers information contained in electronic databases.

2.2.7. Time frames for the application of exceptions

The suggestion to define events before which documents would not be accessible has not been given much support. On the other hand, systematic disclosure of documents after specific events and well before the 30-year limit for opening the archives has been welcomed. Experience has shown, however, that access must systematically be refused in regard to documents pertaining to judicial or quasi-judicial proceedings before a public hearing has taken place or a final decision has been adopted. This has also been confirmed by the case law (see point 2.3.3).

The Commission proposes to adjust Article 2

2.2.8. Scope of the Regulation

Many respondents to the Green Paper called for an extension of the scope of the Regulation to all EU institutions, bodies and agencies.

Such an extension is not possible under the current Treaty, but will be achieved when the Treaty on the Functioning of the Union enters into force.

2.2.9. Access to documents originating from Member States

This issue was also raised by some respondents, as well as in Parliament's Resolution (see point 2.1.4 above). It has, in the meantime, been clarified by a judgment of the Court of Justice (see point 2.3.2).

2.3. Recent Case Law

In a series of judgments, the Court of First Instance and the Court of Justice have ruled on some major issues regarding the application of the Regulation, which are being addressed in this proposal.

2.3.1. Access to personal data

In its judgment of 8 November 2007 in the Bavarian Lager case[7], the Court of First Instance interpreted the exception regarding the protection of personal data and considered the relationship between Regulation (EC) No 1049/2001 and the Regulation on data protection[8].

The relation between the Regulations on public access and on the protection of personal data is clarified in the new Article 4(5).

2.3.2. Access to documents originating from a Member State

On 18 December 2007, the Court of Justice annulled the judgment of the Court of First Instance of 30 November 2004 in a case concerning the right of Member States to oppose disclosure by the institutions of documents originating from them[9].

The existing provision in Article 4(5) is replaced by the new Article 5(2).

2.3.3. Applicability of exceptions before and after a specific event

In its judgment of 13 April 2005 in a case concerning access to a cartel file[10], the Court of First Instance ruled that, in principle, an institution receiving an application for access to documents must carry out a concrete, individual assessment of the content of the documents referred to in the request. However, such an individual assessment might not be required if, due to the particular circumstances of the case, the documents requested are manifestly covered by an exception to the right of access. In a recent judgment, the Court considered that written submission to the Courts were manifestly covered by the exception aimed at protecting court proceedings before an oral hearing has taken place[11].

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7 Case 194/04, *The Bavarian Lager Company Ltd v Commission*, not yet reported.

8 Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

9 Case C-64/05 P, *Sweden and others v Commission*, not yet reported, appeal against the judgment of the CFI in case T-168/02, International Fund for Animal Welfare v Commission, [2004] ECR, p. II-4135.

10 Case T-2/03, Verein *für Konsumenteninformation v Commission*, [2005] ECR, p. II-1121.

11 Judgment of the CFI of 12 September 2007, case T-36/04, *Association de la Presse Internationale asbl v Commission*, not yet reported.

New provisions have been added under Article 2 (5) and (6).

3. PROPOSED AMENDMENTS TO REGULATION (EC) NO 1049/2001

3.1. Purpose and Beneficiaries of the Regulation - Articles 1 and 2

The wording in Article 1(a) is slightly modified to clarify that the purpose of the Regulation is to grant public access to documents. This is consistent with the legal base and has been confirmed by the case law of the Court of First Instance[12].

The right of access will be granted to any natural or legal person, regardless of nationality or State of residence. This makes the Regulation consistent with the provisions of Regulation (EC) No 1367/2006 on access to information in environmental matters[13]. Article 2(1) is amended accordingly and Article 2(2) is repealed.

3.2. Scope and Definitions – Articles 2 and 3

It is specified in Article 2(2) that the Regulation applies to all documents held by an institution concerning a matter relating to the policies, activities and decisions falling within its sphere of responsibility. In the current text this aspect is mentioned under the definition of "document" in Article 3(a). However, this is related to the scope of the Regulation rather than to the definition of the concept of "document".

A new paragraph 5 is added to Article 2 clarifying that documents submitted to Courts by other parties than the institutions do not fall within the scope of the Regulation. It is worth noting that the Court of Justice is excluded from the right of public access under Article 255 of the EC Treaty and that the Lisbon Treaty extends this right to the Court of Justice but to documents relating to its administrative activities.

Access to documents related to the exercise of the investigative powers of an institution should be excluded until the relevant decision can no longer be challenged by an action for annulment or the investigation is closed. During this investigation phase, only the specific rules in this field will apply. The Regulations governing competition and trade defence (anti-dumping, anti-subsidy and safeguard) proceedings and proceedings under the Trade Barriers Regulations contain provisions regarding privileged rights of access for interested parties and provisions on publicity[14]. These rules would be undermined if the public were to be granted wider access under Regulation (EC) No 1049/2001. Information obtained from natural or legal persons in the course of such investigations should continue to be protected after the relevant decision has become definitive.

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12 Judgment of 6 July 2006, joined cases T-391/03 and T-70/04, *Franchet and Byk v Commission*, ECR [2006], p. II-2023.

13 See footnote 5.

14 See Articles 27, 28 and 30 of Regulation 1/2003 (competition) Articles 6(7) and 14(2) of Regulation (EC) No 384/96 (antidumping), Articles 11(7) and 24(2) of Regulation (EC) No 2026/97 (anti-subsidy), Article 6(2) of Regulation (EC) No 3285/94 (safeguards) and Article 5(2) of Regulation (EC) No 519/94 (safeguards against non-WTO members).

The wide definition of the concept of "document" in Article 3(a) is maintained. However, a "document" only exists if it has been transmitted to its recipients or circulated within the institution or has been otherwise registered. On the other hand, the definition of "document" should include data contained in electronic systems insofar as these can be extracted in readable form.

3.3. Exceptions – Article 4

The exception aimed at protecting the environment, laid down in Article 6(2) of Regulation 1367/2006, is added under Article 4(1) of Regulation (EC) No 1049/2001 in order to align this Regulation with the provisions stemming from the Aarhus Convention. For reasons of clarity the indents are replaced with letters.

Also with a view to aligning the Regulation with the Aarhus Convention, the exception aimed at protecting commercial interests in Article 4(2) will not apply to information on emissions which is relevant for the protection of the environment. As a consequence, the protection of intellectual property rights is mentioned as a separate exception.

The concept of "court proceedings" is clarified and includes arbitration and dispute settlement proceedings.

A new exception is added, aimed at protecting procedures leading to the selection of staff or of contracting parties. Transparency in these areas is regulated by the Staff Regulations and by the Financial Regulation. The proper functioning of selection boards and evaluation committees should be safeguarded.

Article 4(3) is reworded for reasons of clarity but is not altered on substance.

Articles 4(4) and 4(5) are moved to Article 5, since they contain procedural rules rather than exceptions.

Article 4(1) (b) regarding access to personal data is moved to a new Article 4(5) and reformulated in order to clarify the relationship between Regulations (EC) No 1049/2001 and 45/2001 (protection of personal data).

3.4. Consultations with Third Parties – Article 5

The new Article 5(2) lays down the procedure to be followed where access is requested to documents originating from a Member State. The Member State must be consulted unless it is clear that the documents shall or shall not be disclosed; if it gives reasons for not disclosing the requested documents, based on Regulation (EC) No 1049/2001 or on relevant similar and specific rules in its national legislation, the institution will deny access to these documents. This new provision takes into account the judgment of the Court of Justice in the appeal case C-64/05 P (see section 1.5.2 above).

3.5. Procedural Rules – Articles 6, 8 and 10

Article 6(2) is amended in order to take into account cases where the requested documents cannot be easily identified.

In Article 8, the time limit for handling a confirmatory application is extended to 30 working days, with a possibility for a further extension by 15 working days. Experience has shown that it is almost impossible to handle a confirmatory application within 15 working days. The handling of a confirmatory application requires more time since such an application leads to a formal decision of the institution, for which strict procedural rules apply.

A new paragraph is added to Article 10, clarifying that, where specific modalities for access are laid down in EU or national law, these must be respected. This is particularly the case where access is subject to payment of a fee, which is a source of income for the body that produced the documents.

3.6. Active Dissemination – Article 12

This provision is redrafted with the purpose of granting direct access to documents, which are part of procedures leading to the adoption of EU legislative acts or non-legislative acts of general application. Such documents should be made accessible by the institutions from the outset, unless an exception to the public right of access clearly applies.

↓ 1049/2001

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 255(2) thereof,

Having regard to the proposal from the Commission[15],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[16],

Whereas:

⇩ new

(1) A number of substantive changes are to be made to Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents[17]. In the interest of clarity, that Regulation should be recast.

↓ 1049/2001 Recital 1

(2) The second subparagraph of Article 1 of the Treaty on European Union enshrines the concept of openness, stating that the Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

15 OJ C , , p. .

16 OJ C , , p. .

17 OJ L 145, 31.5.2001, p. 43.

↓ 1049/2001 Recital 2

(3) Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system. Openness contributes to strengthening the principles of democracy and respect for fundamental rights as laid down in Article 6 of the EU Treaty and in the Charter of Fundamental Rights of the European Union.

↓ 1049/2001 Recital 3 (adapted)

~~The conclusions of the European Council meetings held at Birmingham, Edinburgh and Copenhagen stressed the need to introduce greater transparency into the work of the Union institutions. This Regulation consolidates the initiatives that the institutions have already taken with a view to improving the transparency of the decision-making process.~~

⇩ new

(4) The general principles and the limits on grounds of public or private interest governing the public right of access to documents have been laid down in Regulation (EC) No 1049/2001, which became applicable on 3 December 2001[18].

(5) A first assessment of the implementation of Regulation (EC) No 1049/2001 was made in a report published on 30 January 2004[19]. On 9 November 2005, the Commission decided to launch the process leading to the review of Regulation (EC) No 1049/2001. In a Resolution adopted on 4 April 2006, the European Parliament has invited the Commission to submit a proposal amending the Regulation[20]. On 18 April 2007, the Commission published a Green Paper on the review of the Regulation[21] and launched a public consultation.

↓ 1049/2001 Recital 4

(6) The purpose of this Regulation is to give the fullest possible effect to the right of public access to documents and to lay down the general principles and limits on such access in accordance with Article 255(2) of the EC Treaty.

[18] OJ L 145, 31.5.2001, p. 43.
[19] COM(2004) 45.
[20] […]
[21] COM(2007) 185.

↓ 1049/2001 Recital 5 (adapted)

(7) Since the question of access to documents is not covered by provisions of ~~the Treaty establishing the European Coal and Steel Community and~~ the Treaty establishing the European Atomic Energy Community, the European Parliament, the Council and the Commission should, in accordance with Declaration No 41 attached to the Final Act of the Treaty of Amsterdam, draw guidance from this Regulation as regards documents concerning the activities covered by ~~those two Treaties~~ ⌦ that Treaty ⌫ .

↓ 1049/2001 Recital 7

(8) In accordance with Articles 28(1) and 41(1) of the EU Treaty, the right of access also applies to documents relating to the common foreign and security policy and to police and judicial cooperation in criminal matters. Each institution should respect its security rules.

⇩ new

(9) The European Parliament and the Council adopted on 6 September 2006 Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters to Community institutions and bodies[22]. With regard to access to documents containing environmental information, this Regulation should be consistent with Regulation (EC) No 1367/2006.

(10) With regard to the disclosure of personal data, a clear relationship should be established between this Regulation and Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[23].

(11) Clear rules should be established regarding the disclosure of documents originating from the Member States and of documents of third parties which are part of judicial proceedings files or obtained by the institutions by virtue of specific powers of investigation conferred upon them by EC law.

↓ 1049/2001 Recital 6

(12) Wider access should be granted to documents in cases where the institutions are acting in their legislative capacity, including under delegated powers, while at the same time preserving the effectiveness of the institutions' decision-making process. Such documents should be made directly accessible to the greatest possible extent.

[22] OJ L 264 , 25.9.2006, p. 13.
[23] OJ L 8, 12.1.2001, p. 1.

⇩ new

(13) Transparency in the legislative process is of utmost importance for citizens. Therefore, institutions should actively disseminate documents, which are part of the legislative process. Active dissemination of documents should also be encouraged in other fields.

🡻 1049/2001 Recital 8

(14) In order to ensure the full application of this Regulation to all activities of the Union, all agencies established by the institutions should apply the principles laid down in this Regulation.

🡻 1049/2001 Recital 9

(15) On account of their highly sensitive content, certain documents should be given special treatment. Arrangements for informing the European Parliament of the content of such documents should be made through interinstitutional agreement.

🡻 1049/2001 Recital 10

(16) In order to bring about greater openness in the work of the institutions, access to documents should be granted by the European Parliament, the Council and the Commission not only to documents drawn up by the institutions, but also to documents received by them. In this context, it is recalled that Declaration No 35 attached to the Final Act of the Treaty of Amsterdam provides that a Member State may request the Commission or the Council not to communicate to third parties a document originating from that State without its prior agreement.

🡻 1049/2001 Recital 11

(17) In principle, all documents of the institutions should be accessible to the public. However, certain public and private interests should be protected by way of exceptions. The institutions should be entitled to protect their internal consultations and deliberations where necessary to safeguard their ability to carry out their tasks. In assessing the exceptions, the institutions should take account of the principles in Community legislation concerning the protection of personal data, in all areas of Union activities.

🡻 1049/2001 Recital 12

(18) All rules concerning access to documents of the institutions should be in conformity with this Regulation.

↓ 1049/2001 Recital 13

(19) In order to ensure that the right of access is fully respected, a two-stage administrative procedure should apply, with the additional possibility of court proceedings or complaints to the Ombudsman.

↓ 1049/2001 Recital 14 (adapted)

(20) Each institution should take the measures necessary to inform the public of the ~~new~~ provisions in force and to train its staff to assist citizens exercising their rights under this Regulation. In order to make it easier for citizens to exercise their rights, each institution should provide access to a register of documents.

↓ 1049/2001 Recital 15

(21) Even though it is neither the object nor the effect of this Regulation to amend national legislation on access to documents, it is nevertheless clear that, by virtue of the principle of loyal cooperation which governs relations between the institutions and the Member States, Member States should take care not to hamper the proper application of this Regulation and should respect the security rules of the institutions.

↓ 1049/2001 Recital 16

(22) This Regulation is without prejudice to existing rights of access to documents for Member States, judicial authorities or investigative bodies.

↓ 1049/2001 Recital 17 (adapted)

(23) In accordance with Article 255(3) of the EC Treaty, each institution lays down specific provisions regarding access to its documents in its rules of procedure, ~~Council Decision 93/731/EC of 20 December 1993 on public access to Council documents[24], Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents[25], European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents[26], and the rules on confidentiality of Schengen documents should therefore, if necessary, be modified or be repealed.~~

24 ~~OJ L 340, 31.12.1993, p. 43. Decision as last amended by Decision 2000/527/EC (OJ L 212, 23.8.2000, p. 9).~~

25 ~~OJ L 46, 18.2.1994, p. 58. Decision as amended by Decision 96/567/EC, ECSC, Euratom (OJ L 247, 28.9.1996, p. 45).~~

26 ~~OJ L 263, 25.9.1997, p. 27.~~

↓ 1049/2001

HAVE ADOPTED THIS REGULATION:

Article 1

Purpose

The purpose of this Regulation is:

↓ 1049/2001 (adapted)

(a) to define the principles, conditions and limits on grounds of public or private interest governing the right of access to European Parliament, Council and Commission (hereinafter referred to as «the institutions») documents provided for in Article 255 of the EC Treaty in such a way as to ~~ensure~~ ⌦ grant the public ⌫ the widest possible access to ⌦ such ⌫ documents~~;~~;

(b) to establish rules ensuring the easiest possible exercise of this right~~;~~; ~~and~~

↓ 1049/2001

(c) to promote good administrative practice on access to documents.

Article 2

Beneficiaries and scope

↓ 1049/2001 (adapted)

1. Any ~~citizen of the Union, and any~~ natural or legal person ~~residing or having its registered office in a Member State,~~ ~~has~~ ⌦ shall have ⌫ a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.

~~2. The institutions may, subject to the same principles, conditions and limits, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.~~

~~3~~2. This Regulation shall apply to all documents held by an institution, ~~that is to say~~ ⌦ namely ⌫ , documents drawn up or received by it and in its possession ⌦ concerning a matter relating to the policies, activities and decisions falling within its sphere of responsibility ⌫, in all areas of activity of the European Union.

↓ 1049/2001

~~4~~3. Without prejudice to Articles 4 and 9, documents shall be made accessible to the public either following a written application or directly in electronic form or through a register. In particular, documents drawn up or received in the course of a legislative procedure shall be made directly accessible in accordance with Article 12.

~~3~~4. Sensitive documents as defined in Article 9(1) shall be subject to special treatment in accordance with that Article.

⇩ new

5. This Regulation shall not apply to documents submitted to Courts by parties other than the institutions.

6. Without prejudice to specific rights of access for interested parties established by EC law, documents forming part of the administrative file of an investigation or of proceedings concerning an act of individual scope shall not be accessible to the public until the investigation has been closed or the act has become definitive. Documents containing information gathered or obtained from natural or legal persons by an institution in the framework of such investigations shall not be accessible to the public.

↓ 1049/2001

~~6~~7. This Regulation shall be without prejudice to 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.

Article 3

Definitions

For the purpose of this Regulation:

↓ 1049/2001 (adapted)
⇨ new

(a) «document» ~~shall mean~~ ⌦ means ⌫ any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) ~~concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility~~ ⇨ drawn-up by an institution and formally transmitted to one or more recipients or otherwise registered, or received by an institution; data contained in electronic storage, processing and retrieval systems are documents if they can be extracted in the form of a printout or electronic-format copy using the available tools for the exploitation of the system ⇦ ;

(b) «third party» ~~shall mean~~ ⌦ means ⌫ any natural or legal person, or any entity outside the institution concerned, including the Member States, other Community or non-Community institutions and bodies and third countries.

↓ 1049/2001
⇨ new

Article 4

Exceptions

1. The institutions shall refuse access to a document where disclosure would undermine the protection of~~: (a)~~ the public interest as regards:

(a) public security ⇨ including the safety of natural or legal persons ⇦ ;

(b) defence and military matters;

(c) international relations;

(d) the financial, monetary or economic policy of the Community or a Member State;

⇩ new

(e) the environment, such as breeding sites of rare species.

↓ 1049/2001

~~(b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.~~

2. The institutions shall refuse access to a document where disclosure would undermine the protection of:

↓ 1049/2001 (adapted)

(a) commercial interests of a natural or legal person~~;~~ ~~including intellectual property,~~

⌦ (b) intellectual property rights; ⌫

↓ 1049/2001 (adapted)
⇨ new

(c) ⌦ legal advice and ⌫ court ~~proceedings~~ ⇨ , arbitration and dispute settlement proceedings ⇦ ~~and~~ ~~;~~;

(d) the purpose of inspections, investigations and audits~~;~~;

⇩ new

(e) the objectivity and impartiality of selection procedures.

↓ 1049/2001 (adapted)
⇨ new

~~unless there is an overriding public interest in disclosure.~~

3. Access to ⌦ the following documents ⌫ ~~a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution,~~ shall be refused if ⌦ their ⌫ disclosure ~~of the document~~ would seriously undermine the ~~institution's~~ decision-making process ⌦ of the institutions: ⌫ ~~, unless there is an overriding public interest in disclosure.~~

⌦ (a) documents relating to a matter where the decision has not been taken; ⌫

⌦ (b) documents ⌫ ~~Access to a document~~ containing opinions for internal use as part of deliberations and preliminary consultations within the institutions concerned~~,~~ ~~shall be refused~~ even after the decision has been taken ~~if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure~~.

⌦ 4. The exceptions under paragraphs (2) and (3) shall apply unless there is an overriding public interest in disclosure. ⌫ ⇨ As regards paragraph 2(a) an overriding public interest in disclosure shall be deemed to exist where the information requested relates to emissions into the environment. ⇦

⇩ new

5. Names, titles and functions of public office holders, civil servants and interest representatives in relation with their professional activities shall be disclosed unless, given the particular circumstances, disclosure would adversely affect the persons concerned. Other personal data shall be disclosed in accordance with the conditions regarding lawful processing of such data laid down in EC legislation on the protection of individuals with regard to the processing of personal data.

🡻 1049/2001 (adapted)

6. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.

7. The exceptions as laid down in ~~paragraphs 1 to 3~~ this Article shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. In the case of documents covered by the exceptions relating to ~~privacy~~ ⌦ the protection of personal data ⌫ or commercial interests and in the case of sensitive documents, the exceptions may, if necessary, continue to apply after this period.

Article 5

🡻 1049/2001 (adapted)

⌦ **Consultations** ⌫

~~4~~1. As regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception ⌦ referred to ⌫ in ~~paragraph 1 or 2~~ Article 4 is applicable, unless it is clear that the document shall or shall not be disclosed.

~~5. A Member State may request the institution not to disclose a document originating from that Member State without its prior agreement.~~

⇩ new

2. Where an application concerns a document originating from a Member State, other than documents transmitted in the framework of procedures leading to a legislative act or a non-legislative act of general application, the authorities of that Member State shall be consulted.

The institution holding the document shall disclose it unless the Member State gives reasons for withholding it, based on the exceptions referred to in Article 4 or on specific provisions in its own legislation preventing disclosure of the document concerned. The institution shall appreciate the adequacy of reasons given by the Member State insofar as they are based on exceptions laid down in this Regulation.

↓ 1049/2001 (adapted)

~~*Article 5*~~

~~**Documents in the Member States**~~

3. Where a Member State receives a request for a document in its possession, ~~originating~~ ⌦ which originates ⌫ from an institution, unless it is clear that the document shall or shall not be disclosed, the Member State shall consult with the institution concerned in order to take a decision that does not jeopardise ~~the attainment of~~ the objectives of this Regulation. The Member State may instead refer the request to the institution.

↓ 1049/2001
⇨ new

Article 6

Applications

1. Applications for access to a document shall be made in any written form, including electronic form, in one of the languages referred to in Article 314 of the EC Treaty and in a sufficiently precise manner to enable the institution to identify the document. The applicant is not obliged to state reasons for the application.

2. If an application is not sufficiently precise ⇨ or if the requested documents cannot be identified ⇦, the institution shall ask the applicant to clarify the application and shall assist the applicant in doing so, for example, by providing information on the use of the public registers of documents. ⇨ The time limits provided for under Articles 7 and 8 shall start to run when the institution has received the requested clarifications. ⇦

3. In the event of an application relating to a very long document or to a very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair ⇨ and practical ⇦ solution.

4. The institutions shall provide information and assistance to citizens on how and where applications for access to documents can be made.

Article 7

Processing of initial applications

1. An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. Within 15 working days from registration of the application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal and inform the applicant of his or her right to make a confirmatory application in accordance with paragraph ~~2~~ 4 of this Article.

~~3~~2. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time-limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

~~2~~3. In the event of a total or partial refusal, the applicant may, within 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.

~~4~~4. Failure by the institution to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.

Article 8

Processing of confirmatory applications

↓ 1049/2001 (adapted)
⇨ new

1. A confirmatory application shall be handled promptly. Within ~~15~~ ⇨ 30 ⇦ working days from registration of such an application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal. In the event of a total or partial refusal, the institution shall inform the applicant of the remedies open to him or her~~, namely instituting court proceedings against the institution and/or making a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively~~.

↓ 1049/2001

~~2~~2. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

⇩ new

3. In the event of a total or partial refusal, the applicant may bring proceedings before the Court of First Instance against the institution and/or make a complaint to the European Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively.

🡻 1049/2001 (adapted)

~~3~~4. Failure by the institution to reply within the prescribed time limit shall be considered as a negative reply and ⌦ shall ⌫ entitle the applicant to institute court proceedings against the institution and/or make a complaint to the Ombudsman, under the relevant provisions of the EC Treaty.

🡻 1049/2001

Article 9

Treatment of sensitive documents

1. Sensitive documents are documents originating from the institutions or the agencies established by them, from Member States, third countries or International Organisations, classified as «TRÈS SECRET/TOP SECRET», «SECRET» or «CONFIDENTIEL» in accordance with the rules of the institution concerned, which protect essential interests of the European Union or of one or more of its Member States in the areas covered by Article 4(1)(a), notably public security, defence and military matters.

2. Applications for access to sensitive documents under the procedures laid down in Articles 7 and 8 shall be handled only by those persons who have a right to acquaint themselves with those documents. These persons shall also, without prejudice to Article 11(2), assess which references to sensitive documents could be made in the public register.

3. Sensitive documents shall be recorded in the register or released only with the consent of the originator.

4. An institution which decides to refuse access to a sensitive document shall give the reasons for its decision in a manner which does not harm the interests protected in Article 4.

5. Member States shall take appropriate measures to ensure that when handling applications for sensitive documents the principles in this Article and Article 4 are respected.

6. The rules of the institutions concerning sensitive documents shall be made public.

7. The Commission and the Council shall inform the European Parliament regarding sensitive documents in accordance with arrangements agreed between the institutions.

Article 10

Access following an application

↓ 1049/2001 (adapted)

1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, including, where available, an electronic copy, according to the applicant's preference. ~~The cost of producing and sending copies may be charged to the applicant. This charge shall not exceed the real cost of producing and sending the copies. Consultation on the spot, copies of less than 20 A4 pages and direct access in electronic form or through the register shall be free of charge.~~

2. If a document ~~has already been released by the institution concerned~~ ⌦ is publicly available ⌫ and is easily accessible to the applicant, the institution may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document.

↓ 1049/2001

3. Documents shall be supplied in an existing version and format (including electronically or in an alternative format such as Braille, large print or tape) with full regard to the applicant's preference.

↓ 1049/2001 (adapted)

⌦ 4. The cost of producing and sending copies may be charged to the applicant. This charge shall not exceed the real cost of producing and sending the copies. Consultation on the spot, copies of less than 20 A4 pages and direct access in electronic form or through the register shall be free of charge. ⌫

⇩ new

5. This Regulation shall not derogate from specific modalities governing access laid down in EC or national law, such as the payment of a fee.

↓ 1049/2001

Article 11

Registers

1. To make citizens' rights under this Regulation effective, each institution shall provide public access to a register of documents. Access to the register should be provided in electronic form. References to documents shall be recorded in the register without delay.

2. For each document the register shall contain a reference number (including, where applicable, the interinstitutional reference), the subject matter and/or a short description of the content of the document and the date on which it was received or drawn up and recorded in the register. References shall be made in a manner which does not undermine protection of the interests in Article 4.

3. The institutions shall immediately take the measures necessary to establish a register which shall be operational by 3 June 2002.

Article 12

↓ 1049/2001 (adapted)

Direct access ~~in electronic form or through a register~~ ⌦ to documents ⌫

~~1. The institutions shall as far as possible make documents directly accessible to the public in electronic form or through a register in accordance with the rules of the institution concerned.~~

~~2~~1. ~~In particular, legislative documents, that is to say,~~ ~~d~~Documents drawn up or received in the course of procedures for the adoption of ⌦ EU legislative ⌫ acts ~~which are legally binding in or for the Member States, should~~ ⌦ or non-legislative acts of general application shall ⌫ , subject to Articles 4 and 9, be made directly accessible ⌦ to the public ⌫ .

~~3~~2. Where possible, other documents, notably documents relating to the development of policy or strategy, ~~should~~ ⌦ shall ⌫ be made directly accessible ⌦ in electronic form ⌫ .

↓ 1049/2001

~~4~~3. Where direct access is not given through the register, the register shall as far as possible indicate where the document is located.

⇩ new

4. Each institution shall define in its rules of procedure which other categories of documents are directly accessible to the public.

Article 13

Publication in the Official Journal

1. In addition to the acts referred to in Article 254(1) and (2) of the EC Treaty and the first paragraph of Article 163 of the Euratom Treaty, the following documents shall, subject to Articles 4 and 9 of this Regulation, be published in the Official Journal:

(a) Commission proposals;

(b) common positions adopted by the Council in accordance with the procedures referred to in Articles 251 and 252 of the EC Treaty and the reasons underlying those common positions, as well as the European Parliament's positions in these procedures;

(c) framework decisions and decisions referred to in Article 34(2) of the EU Treaty;

(d) conventions established by the Council in accordance with Article 34(2) of the EU Treaty;

(e) conventions signed between Member States on the basis of Article 293 of the EC Treaty;

(f) international agreements concluded by the Community or in accordance with Article 24 of the EU Treaty.

2. As far as possible, the following documents shall be published in the Official Journal:

(a) initiatives presented to the Council by a Member State pursuant to Article 67(1) of the EC Treaty or pursuant to Article 34(2) of the EU Treaty;

(b) common positions referred to in Article 34(2) of the EU Treaty;

(c) directives other than those referred to in Article 254(1) and (2) of the EC Treaty, decisions other than those referred to in Article 254(1) of the EC Treaty, recommendations and opinions.

3. Each institution may in its rules of procedure establish which further documents shall be published in the Official Journal.

Article 14

Information

1. Each institution shall take the requisite measures to inform the public of the rights they enjoy under this Regulation.

2. The Member States shall cooperate with the institutions in providing information to the citizens.

Article 15

Administrative practice in the institutions

1. The institutions shall develop good administrative practices in order to facilitate the exercise of the right of access guaranteed by this Regulation.

2. The institutions shall establish an interinstitutional committee to examine best practice, address possible conflicts and discuss future developments on public access to documents.

↓ 1049/2001 (adapted)
⇨ new

Article 16

Reproduction of documents

This Regulation shall be without prejudice to any existing rules on copyright which may limit a third party's right to ⇨ obtain copies of documents or to ⇦ reproduce or exploit released documents.

↓ 1049/2001 (adapted)

Article 17

Reports

~~1.~~ Each institution shall publish annually a report for the preceding year including the number of cases in which the institution refused to grant access to documents, the reasons for such refusals and the number of sensitive documents not recorded in the register.

~~2. At the latest by 31 January 2004, the Commission shall publish a report on the implementation of the principles of this Regulation and shall make recommendations, including, if appropriate, proposals for the revision of this Regulation and an action programme of measures to be taken by the institutions.~~

~~*Article 18*~~

~~**Application measures**~~

~~1. Each institution shall adapt its rules of procedure to the provisions of this Regulation. The adaptations shall take effect from 3 December 2001.~~

~~2. Within six months of the entry into force of this Regulation, the Commission shall examine the conformity of Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983~~

~~concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community~~[27] ~~with this Regulation in order to ensure the preservation and archiving of documents to the fullest extent possible.~~

~~3. Within six months of the entry into force of this Regulation, the Commission shall examine the conformity of the existing rules on access to documents with this Regulation.~~

↓

Article 18

Repeal

Regulation (EC) No 1049/2001 is repealed with effect from [...].

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.

↓ 1049/2001 (adapted)

Article 19

Entry into force

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

~~It shall be applicable from 3 December 2001.~~

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

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27 ~~OJ L 43, 15.2.1983, p. 1.~~

↑

ANNEX

CORRELATION TABLE

Regulation 1049/2001	This Regulation
Article 1	Article 1
Article 2(1)	Article 2(1)
Article 2(2)	-
Article 2(3)	Article 2(2)
Article 2(4)	Article 2(3)
Article 2(5)	Article 2(4)
-	Article 2(5)
-	Article 2(6)
Article 2(6)	Article 2(7)
Article 3	Article 3
Article 4(1) (a)	Article 4(1)
Article 4(1) (b)	Article 4(5)
Article 4(2)	Article 4(2)
Article 4(3)	Article 4(3)
Article 4(4)	Article 5(1)
Article 4(5)	Article 5(2)
-	Article 4(4)
Article 4(6)	Article 4(6)
Article 4(7)	Article 4(7)
Article 5	Article 5(3)
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Article 7	Article 7
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Article 10	Article 10
Article 11	Article 11
Article 12	Article 12
Article 13	Article 13
Article 14	Article 14
Article 15	Article 15
Article 16	Article 16
Article 17(1)	Article 17
Article 17(2)	-
Article 18	-
-	Article 18
-	Article 19
-	Annex