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THE EUROPEAN UNION**

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NOTE

from: the Presidency

to : Delegations

No. Cion prop.: 9200/08 + COR 1 INF 103 API 23 JUR 192 CODEC 946 (COM(2008) 229 final)

No. prev. doc. 10859/09 INF 161 API 85 CODEC 822

Subject: Proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (recast)

Following the thorough examination by the Information Working Party of all the Articles of the Commission's proposal for a recast of Regulation (EC) No 1049/2001, the General Secretariat has summarized the outcome in a report (doc. 10859/09), which was dated 30 June 2009.

At the forthcoming IWP meeting, to be held on 8 July, delegations are invited to

(i) comment on the report in general,

(ii) comment on the "Concluding observations" as regards the list of Articles for which there is widespread support *for the aim of the Commission's proposal*, and, also comment on the possibility of adding the technical amendments proposed by the Commission in Articles 1(a), 2(2), 3(b), 5(1) and (3), and 12(4) to such a list,

(iii) comment on the possibility to, for future work, refer two of the issues to the category of *more divisive issues*; firstly Article 3(a), since there seems to be no widespread support for either of the proposals regarding the first part of the Article, while at the same time, there seems to be a large group of delegations in favour of the second part of the Commission's proposal, and, secondly, the method used for alignment with the Aarhus Regulation, relevant for proposed amendments in Articles 4(1)(e), 4(2)(a) and (b), 4(4) and 4(7),

(iv) comment on technical drafting proposals from the Presidency regarding Articles 4(4) and (7), from Member States regarding Articles 8(1) and (4), 10(4) and (5), 12(2) and 17(2) and from the EP regarding Article 12(1), see annex. The proposals from the Member States and the EP have not been opposed to by other Member States.

(v) comment on the possibility to conclude that the Articles listed for "widespread support" or acceptance by "all delegations" in the report, as well as the Articles suggested to be added under (ii), could be accepted for now. Keeping in mind that nothing is settled until everything is settled, it is thus assumed that there will not be any need for further discussions on these Articles within the Council, until such time as the Council is to respond to a future position adopted by the European Parliament.

The following documents should serve as a basis for the work of the IWP on 8 July:

- the Commission's proposal for a recast of Regulation 1049/2001 (doc. 9200/08)
- the comments made by delegations during the first and second examination, as summarized by the General Secretariat (doc. 10859/09)
- the observations made by the Council's Legal Service on the recasting proposal (doc. 5671/09 ADD 1)
- the admissible amendments adopted by the EP at its plenary session on 11 March 2009 (as listed in annexes I and II to document 7791/09).

Draft technical amendments

Article 4 (paragraphs 4 and 7, to be considered *if* the Commission's method regarding the alignment with Aarhus were to be accepted; amendment proposed by the Presidency)

4. The exceptions under paragraphs (2) and (3) shall apply unless there is an overriding public interest in disclosure. As regards paragraph 2(a),(b) and (d) an overriding public interest in disclosure shall be deemed to exist where the information requested relates to emissions into the environment, **with the exception of investigations, in particular those concerning possible infringements of Community law.**

As regards the other exceptions set out in Article 4, the institution must take into account the public interest served by disclosure and whether the information requested relates to emissions into the environment, if a request concerns access to environmental information.

7. The exceptions as laid down in 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 the protection of the protection of personal data, or commercial interests **or intellectual property rights** and in the case of sensitive documents, the exceptions may, if necessary, continue to apply after this period.

Article 8 (oral amendments proposed by **DELETED** respectively on 25 June)

1. A confirmatory application shall be handled promptly. Within 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 **in accordance with paragraph 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 **conditions laid down in Articles 230 and 195 of the EC Treaty**, respectively.

Article 10 (oral amendment proposed by **DELETED** on 25 June)

4. **Without prejudice to** specific modalities governing access laid down in EC or national law, such as the payment of a fee, 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.

(paragraph 5 deleted)

Article 12 (amendment proposed by the EP, supported by a number of Member States)

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. Documents drawn up or received in the course of procedures for the adoption of EU legislative acts or non-legislative acts of general application shall, subject to Articles 4 and 9, be made directly accessible **in electronic form**.

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

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

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

Article 17(2) (oral amendment by **DELETED** on 16 December 2008)

2. Within five years of the entry into force of this Regulation, the Commission shall publish a report on the application 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.
