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Publication | 09.12.2009

Access to documents

Greens/EFA motion for a resolution

B7/0191/2009

Tabled by **Heidi Hautala** on behalf of the Greens/EFA Group

European Parliament resolution on improvements needed to the legal framework for access to documents following the entry into force of the Lisbon Treaty, Regulation (EC) 1049/2001

The European Parliament,

 having regard to the Treaty on European Union, the Treaty on the Functioning of the European Union, the Charter of Fundamental Rights of the European Union and the articles thereof which entered into force on 1 December 2009,

 having regard to the questions of 9 November 2009 to the Commission and Council on the improvement needed in the legal framework for access to documents following the entry into force of the Lisbon Treaty, Regulation (EC) 1049/2001 (O-0123/2009 B7?0231/2009, O-0122/2009 B7?0230/2009) and to the debate in plenary,

 having regard to Rule 115(5) of its Rules of Procedure,

A. whereas the Union 'places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice' (Preamble to the Charter of Fundamental Rights) and 'any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium' (Article 42 of the Charter of Fundamental Rights),

B. whereas the Lisbon Treaty has modified not only the legal basis for the Regulation governing access to documents, but also the legal context in which the Regulation is to operate, in particular as regards the relationship between the Union institutions and the citizen[1],

C. whereas this relationship should from now on be framed by the democratic principles outlined in the new Title II of the TEU, according to which 'the Union shall observe the principle of equality of its citizens, who shall receive equal attention from its institutions' (Article 9) and 'every citizen shall have the

right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen' (Article 10(3)),

D. whereas the full integration of the European Community into the EU, as well as the abolition of the intergovernmental regime which still applied to judicial and police cooperation in criminal matters, was driven by the Member States' willingness 'to enhance further the democratic and efficient functioning of the institutions',

E. whereas, in keeping with this new legal framework, all the EU institutions, bodies, offices and agencies and not only the European Parliament, the Council or the Commission (which were already bound by Article 255 of the former EC Treaty) should now conduct their work as openly as possible (Article 15(1) of the TFEU),

F. whereas according to the new TEU and the case law of the Court of Justice[2], openness and participation of civil society are essential conditions to promote good governance of the EU institutions and with it 'the effectiveness of the decision-making process',

G. whereas in accordance with the basic principles of democracy citizens have a right to know and to follow the decision-making process and that enhanced transparency should be guaranteed by the EU Institutions and the Member States' representatives when acting as members of the Council before, during and after the legislative and non-legislative decision-making process in order to allow EU citizens and national parliaments to have a comprehensive understanding of who is doing what and why and to monitor the activities of their representatives,

H. whereas EU Institutions 'shall give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action' and 'shall maintain an open, transparent and regular dialogue with representative associations and civil society' (Article 11(1) and (2) of the TEU),

I. whereas the Lisbon Treaty calls for further improvements to transparency and public access to documents and whereas the case law of the Court of Justice has already been most helpful in clarifying some of the provisions of Regulation (EC) No 1049/2001, so that these must now be interpreted in line with the access-friendly understanding of these provisions espoused by Parliament when the Regulation was adopted; whereas Parliament will not allow any legislative attempts by the Commission or the Council to decrease public access to documents or roll back citizens' right to information,

J. whereas openness and transparency principles should govern not only the decision-making process but also the way in which a text is drafted and accompanied by all the information needed to meet the criteria of proportionality and subsidiarity, in the interests of EU citizens and national parliaments, and whereas this should also be the case for the judiciary; whereas transparency and access to documents should also be guaranteed in relation to how EU policies are implemented at all levels and how EU funds are used,

K. whereas the Court of Justice has confirmed that openness and access to information 'contribute to conferring greater legitimacy on the institutions in the eyes of European citizens and increasing their confidence in them by allowing divergences between various points of view to be openly debated. It is in fact rather a lack of information and debate which is capable of giving rise to doubts in the minds of citizens, not only as regards the lawfulness of an isolated act, but also as regards the legitimacy of the decision-making process as a whole' (Joined Cases C-39/05 and C-52/05, Paragraph 59),

L. whereas long-awaited legal, financial and operational measures should be taken in order to make accessible, in a clear and timely manner, all the relevant documents relating to a specific legislative procedure, whether originating from internal departments or from outside interest groups, and this

information should be made available on an inter-institutional Internet site interconnecting the Institutions' internal databases (such as OPOCE's newly improved EUR-LEX site); whereas internal regulations should be amended accordingly and binding interinstitutional agreements should soon be negotiated on the basis of Article 295 of the TFEU,

M. whereas the new responsibilities of the European Union, and notably of the European Parliament, in fields such as international agreements concerning police and judicial cooperation in criminal matters, require a revised legal framework in relation to Articles 4 and 9 of Regulation (EC) No 1049/2001, including full oversight by the European Parliament as the representative of Europe's citizens,

1. Considers that, after the entry into force of the Lisbon Treaty, Regulation (EC) No 1049/2001 should be urgently updated to become a European 'Freedom of Information Act', notably by:

(a) widening its scope to cover all EU institutions, bodies, offices and agencies currently not covered, such as the European Council, the ECB, the ECJ, Europol and Eurojust;

(b) amending the provisions dealing with legislative and non-legislative procedures on the basis of the new definitions contained in the Treaties;

(c) updating, on the basis of the recent case law of the ECJ, the rules dealing notably with the treatment of internal documents, information and data, to ensure wider access to Legal Service opinions drafted in the framework of the decision-making process, documents and information relating to Member States when acting as members of the Council - including the acts, proposals and amendments tabled, transcripts of its meetings, their positions and votes cast in the Council, including in its working groups and expert groups - the protection of personal data and commercial interests, the content of the institutions' databases, etc.;

(d) granting adequate access to the information available in the EU institutions which will enable an objective evaluation of the implementation of EU rules, acts, measures and programmes in the Member States; ensuring that greater financial transparency is granted in relation to detailed information concerning the EU budget, its implementation and beneficiaries of EU funds and grants;

(e) establishing, in a transparent procedure and in full compliance with the principles of democracy and the rule of law, the general principles and restrictions on grounds of public or private interest limiting access to documents to be classified as 'Top Secret', 'Secret' or 'Confidential' in order to protect the EU's essential interests (in particular public security, defence and military matters);

(f) defining the principles which could be developed by means of interinstitutional agreements under Article 295 of the TFEU with a view to implementing in a coordinated way the new regulation on better lawmaking;

2. Deplores the fact that, in spite of the clear requests it made on 11 March 2009:

- the Commission did not prepare a modified version of its legislative proposal COM(2008)0090 and, on 2 December 2009, following the entry into force of the Lisbon Treaty, approved a communication (COM(2009)0665) which updated only the legal basis of the original proposal, avoiding any modification of its content;
- the Council did not hold any kind of political debate or take any concrete steps to comply with the EP's proposals (some of them also now founded on the new Treaty provisions) and limited itself to a very minimal adaptation of its own internal rules;

3. Calls on the current and the incoming Council Presidency to launch an immediate interinstitutional dialogue at political level with a view to drawing up the new regulation governing access to documents as soon as possible;

4. Instructs its President to forward this resolution to the European Council, the Council, the Commission and the parliaments of the Member States.

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[1] EP Legal Service opinion of 10 October 2009, paragraph 3.

[2] As stated by the ECJ in the 'Turco' Judgment (joined cases C-39/05 P and C-52/05 P), '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'.

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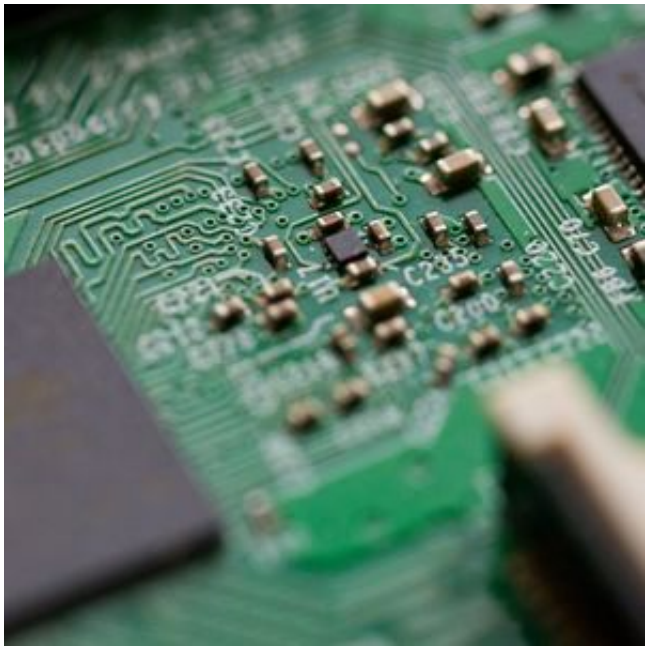


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