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Public access to European Parliament, Council and Commission documents

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European Parliament

Strasbourg, 14 December 2011

Mr. President,
Honourable Members,

Public access to European Parliament, Council and Commission documents is an important right for citizens. It is our responsibility to make such access as broad and easy as possible.

At the same time, we are guardians of other fundamental rights, such as the privacy of individuals or the protection of intellectual property rights. None of these rights can claim precedence over the others, we must protect them all; therefore our Institutions have the responsibility to **strike the right balance** among sometimes competing interests. Our proposal from 2008 reflects this delicate balance.

Two and a half years ago, we discussed the first report presented by your rapporteur, Mr Cashman. At that time, the European Parliament decided not to vote on the draft legislative resolution and to refer the report back to the Civil Liberties Committee.

In the meantime, the Lisbon Treaty has entered into force, and required adjustments to the 2008 Commission

proposal. This was duly highlighted in our Communication on the consequences of the entry into force of the Treaty for pending proposals, where we suggested that these adjustments were included in the ongoing legislative process.

As there was no progress, the Commission decided in March this year to submit a separate proposal with a view to make the current Regulation compliant with the new Treaty. Let me be very clear: the extension of the scope to all institutions, bodies, offices and agencies is a **legal obligation under the Treaty** and, therefore, should not be controversial. This is why I have suggested a swift and separate discussion on this rather technical amendment, leaving the door open for further discussions on other changes to the Regulation.

I regret that this pragmatic and constructive two-step approach has not been followed by the Civil Liberties committee, and that the Report we are discussing today actually merges the two Commission proposals. This means that the implementation of the legal obligation under the Treaty, **the actual creation of a new right for citizens, is now being postponed** until the three institutions agree on the full-scale review of the

Regulation. In the meantime, citizens will have no full, formal access to documents coming from example from the European Council or the EEAS.

And this agreement risks taking time - I am afraid that, given the amendments proposed in the report, agreement on changes to the Regulation is not within reach. I cannot of course anticipate on the position the Council will take on the proposed amendments, but many of them cannot be accepted by the Commission.

Firstly, and because the Treaty of Lisbon has extended the principle of access to documents to all institutions, bodies, agencies and offices of the EU, any common set of rules needs to fit a great number of bodies with very different mandates and competences. This requires a **sufficient degree of flexibility**.

The proposed amendments do not go however in this direction. And some of the amendments would even significantly **weaken the protection of legitimate interests**.

- For example, no exceptions to refuse access would apply to legislative documents – i.e., we would need to

grant access to early drafts of legislation and to legal opinions. This is going too far in our view: we cannot rule out the need to protect a legislative document, at least temporarily; and by their very nature, exceptions will only apply in justified cases.

- Another example, this time on non-legislative documents, where legal advice would no longer be protected if the rapporteur's amendments are carried through;

- A last point to note that it would also be impossible to protect personal data or sensitive documents after 30 years.

Besides protecting legitimate interests and space to think, we must also ensure that the Regulation is used to disclose documents to the public in the public interest – this is its ultimate objective. From our experience however, the Regulation is regularly **misused by lobbyists or law firms** with a view to obtain information serving their own private interests.

Therefore, the Commission proposed some clarification to the scope of the Regulation. These proposals would not affect legitimate requests, and in our estimates would not impact on the numbers of requests granted – they aimed at better protecting public resources, and a well-functioning administration.

Finally, a substantial number of amendments concern provisions of the Regulation which the Commission did not propose to amend. We are not adopting a new Regulation but amending an existing one using **recast**: I simply recall that the scope for substantive changes open to the legislator is bound to those parts included in the Commission's proposal. Such is the agreement between the three institutions on Recast, dating from 2003.

To sum up, the Commission will look carefully at the amendments that will be voted by this Parliament; but let me very clear: **many cannot be accepted by the Commission.**

Though disappointed by the lack of progress so far, I hope that a **real constructive dialogue** can take place between the three institutions after the vote, with a view to reaching an agreement.

I would also like to repeat what I have said on previous occasions: the Regulation is part of EU's policy on transparency but we can do a lot beyond formal legislation:

- improved registers,
- greater user-friendliness and accessibility,
- active dissemination and quicker publishing of documents are some examples.

The real objective of transparency is to bring closer our institutions to citizens through an active policy of informing them and making them aware of how Europe-wide policies are elaborated and may affect their daily life.

I look forward to constructive and thought-provoking discussions to come. The subject deserves it and our citizens are entitled to expect a clear and well-functioning legislation on public access to our documents.

Thank you.