



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 22 June 2012

10698/12

**Interinstitutional File:
2008/0090 (COD)**

LIMITE

**INF 97
API 68
CODEC 1518**

NOTE

from:	Presidency
to	Delegations
No. prev. doc.:	9441/12 INF 75 API 56 CODEC 1153 9651/12 CRS/CRP 17
No. Cion prop.:	9200/08 INF 103 API 23 JUR 192 CODEC 946 + COR 1
Subject:	Recast of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents

1. The purpose of this note is to provide a state of play on the progress achieved on the revision of Regulation (EC) No 1049/2001 (hereinafter referred to as 'the current Regulation') since the adoption by the European Parliament of its position at first reading.
2. With a view to make progress towards a pre-negotiated Council position at first reading, the Presidency proposed¹ an approach focused on the nine following core issues:
 - *Transparency in the legislative process*: direct access to documents, in particular in the context of legislative transparency;
 - *Special protection*: The question of possible special rules for particular types of documents (exclusions from the scope versus general presumptions against release of certain types of documents versus procedural changes to better protect specific areas of activity);

¹ See in particular docs. 6439/12 and 7995/12.

- *The balance between the fundamental rights of access to documents and the protection of personal data and privacy;*
- *The definition of a document:* Expansion of the current definition to explicitly cover databases and whether to decide at the level of the Regulation when a document becomes subject to the Regulation;
- *Member State documents:* The treatment of documents held by an EU institution but originating from Member States, to which access is requested;
- *Alignment with the Århus Convention¹* on access to environmental information.
- *The protection of the objectivity and impartiality of selection procedures;*
- *Institutional scope:* the expansion of the institutional scope of the Regulation in line with the Lisbon Treaty²; and
- *Access to documents/Transparency officers:* The introduction of access to documents/transparency officers in the institutions.

3. As the Commission considers some of the changes resulting from the discussions in the Working Party on Information (WPI) to be outside of the scope of its 2008 proposal, it would need to modify its original proposal if those elements were to be part of the final compromise package. The Commission has signalled its openness to consider such modifications in due course.
4. Since January 2012, the WPI examined the Commission proposals from 2008 and 2011 in the light of the position of the European Parliament at first reading in six meetings³, focusing on the nine issues identified by the Presidency.
5. As a result of these discussions, the Presidency submitted to COREPER a preliminary Council position on the nine issues as a basis to start informal trilogues. COREPER endorsed the preliminary position at its meeting on the 10th of May 2012 (see doc. 9441/12 and doc. 9651/12).

¹ United Nations Economic Commission for Europe (UNECE) 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. See also 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 on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13.).

² See doc. 14549/11.

³ The meetings took place on 20 January, 10 February, 9 and 27 March, 13 and 27 April.

6. Two informal trilogues (15 May 2012 and 23 May 2012) and two technical meetings (22 May 2012 and 30 May 2012) were held with representatives of the European Parliament and of the Commission. The results of these informal meetings were reported orally to the WPI respectively at its meetings on 21 May 2012 and on 1 June 2012, followed by discussions at these meetings as well as on 8 June 2012. A number of informal contacts and meetings with the European Parliament and the Commission respectively also provided fruitful insights into the thinking and the flexibility of the two institutions.
7. At the meeting of the WPI on 8 June 2012, the Presidency informed the WPI that the discussions with the European Parliament had been very constructive, but that - in the view of the Presidency - an adjusted Council preliminary position was required, if a result was to be achieved on the file. It therefore presented a draft revised mandate to the WPI (see DS 1397/12). The WPI did however not share this assessment. Some delegations raised the possibility of abandoning the reform process; others spoke for a limited package focusing on the Commission proposal of 2011 and those elements that all parties could agree on.
8. The Danish Presidency is now coming to an end. One option that could be pursued further would be to seek agreement on a narrow compromise, as was also discussed at the WPI meeting 8 June 2012. One element in the recast of the current Regulation has been particularly urgent: the institutional update to all institutions, bodies, offices and agencies following from the Lisbon Treaty, which has been in force since 2009. A narrow compromise could include this institutional enlargement. It could - if all institutions agree – also be expanded to selected elements in the current Council preliminary position where in principle there was consensus.¹
9. The Presidency would like to once again thank all delegations for the good and constructive cooperation.

¹ Such elements could include Århus alignment; data protection; access to documents/transparency officers; improved access to legislative documents based on the Commission 2008 proposal.