

Thursday 17 December 2009

25. Considers it to be of the utmost importance that a general framework on data protection, as provided for in Article 16 TFEU, is adopted as soon as possible and that specific provisions as required by Article 39 TEU are also adopted;

\*

\* \*

26. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States and the Secretaries-General of the United Nations and the Council of Europe.

---

## Improvements needed in the legal framework for access to documents following the entry into force of the Lisbon Treaty

P7\_TA(2009)0116

**European Parliament resolution of 17 December 2009 on improvements needed to the legal framework for access to documents following the entry into force of the Lisbon Treaty, Regulation (EC) No 1049/2001**

(2010/C 286 E/03)

*The European Parliament,*

- having regard to the Treaty on European Union (TEU), the Treaty on the Functioning of the European Union (TFEU), and the Charter of Fundamental Rights of the European Union,
  - 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 Treaty of Lisbon, Regulation (EC) No 1049/2001 (O-0123/2009 - B7-0231/2009, O-0122/2009 - B7-0230/2009) and to its debate in plenary on 15 December 2009,
  - 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 whereas ‘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 Treaty of Lisbon 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 in terms of the relationship between the Union’s institutions and the citizen’ <sup>(1)</sup>,
- C. whereas that relationship should from now on be framed by the democratic principles outlined in the new Title II of the TEU, which stipulates that ‘the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions’ (Article 9) and that ‘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’ (Preamble to the TEU),

---

<sup>(1)</sup> EP Legal Service opinion of 10 October 2009, paragraph 3.

Thursday 17 December 2009

- E. whereas, in keeping with this new legal framework, all the EU institutions, bodies, offices and agencies, and not just Parliament, the Council or the Commission (which were already bound by Article 255 of the former EC Treaty), are now required to conduct their work as openly as possible (Article 15(1) TFEU),
- F. whereas according to the TEU and the case-law of the Court of Justice of the European Communities (ECJ) <sup>(1)</sup> openness and the participation of civil society are essential conditions for promoting 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 whereas 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 citizens of the Union and national parliaments to gain a comprehensive insight into who is doing what and why and to monitor the activities of their representatives,
- H. whereas the 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) TEU),
- I. whereas the Treaty of Lisbon calls for further improvements to transparency and public access to documents; and whereas the case-law of the ECJ 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 reduce public access to documents or roll back citizens' rights to information,
- J. whereas the principles of openness and transparency 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 citizens of the Union 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, as enshrined in the Commission's European Transparency Initiative,
- K. whereas the ECJ has confirmed that openness and access to information 'contribute to conferring greater legitimacy on the institutions in the eyes of citizens of the Union 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 P and C-52/05 P, paragraph 59),

<sup>(1)</sup> As quoted by the ECJ in the Turco judgment (Joined Cases C-39/05 P and C-52/05 P), Regulation (EC)1049/2001 states that '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'.

Thursday 17 December 2009

- L. whereas long-awaited legal, financial and operational measures should be taken in order to ensure that all the documents relating to a specific legislative procedure are made accessible in a clear and timely manner, whether they originate from internal services or from outside interest groups; whereas this information could be made available on an interinstitutional Internet site linking the institutions' internal registers (such as the Publications Office of the European Union's revamped EUR-Lex site); and whereas internal rules should be amended accordingly and binding interinstitutional agreements negotiated expeditiously on the basis of Article 295 TFEU,
- M. whereas the new powers of the European Union and, in particular, of Parliament in areas such as international agreements on police and judicial cooperation in criminal matters require a stronger legal framework to be laid down in Articles 4 and 9 of Regulation (EC) No 1049/2001 so that EU security can be properly safeguarded whilst at the same time granting full oversight to Parliament as the representative of citizens of the Union,
- N. whereas several EU Member States have already adopted either 'freedom of information acts' or general rules governing access to the information and documents held by public institutions,
1. Considers that, following the entry into force of the Treaty of Lisbon, Regulation (EC) No 1049/2001 should be urgently updated by:
- (a) widening its scope to encompass all the EU institutions, bodies, offices and agencies currently not covered, such as the European Council, the European Central Bank, the ECJ, Europol and Eurojust;
  - (b) amending the provisions dealing with legislative and non-legislative procedures in accordance with the new definitions contained in the Treaties;
  - (c) updating, on the basis of recent ECJ case-law, the rules which deal in particular with the treatment of internal documents, information and data, to ensure wider access to Legal Service opinions drafted within the framework of the decision-making process, documents and information relating to the work of Member State representatives when acting as members of the Council - including the acts, proposals and amendments tabled, transcripts of meetings, their positions and votes cast in the Council, including in its working groups and expert groups - documents relating to international agreements, the protection of personal data and commercial interests, the content of the institutions' registers, etc.;
  - (d) granting access to the information available in the EU institutions which makes it possible to evaluate objectively the implementation of EU rules, acts, measures and programmes in the Member States; ensuring greater financial transparency by providing detailed information concerning the EU budget, its implementation and the beneficiaries of EU funds and grants;
  - (e) establishing, by means of a transparent procedure and in full compliance with democratic principles and the rule of law, the general principles and restrictions on grounds of public or private interest limiting access to documents which are exceptionally to be classified as 'Très secret/Top Secret', 'Secret' or 'Confidentiel' in order to protect the EU's essential interests (Article 9 of Regulation (EC) No 1049/2001);

Thursday 17 December 2009

- (f) defining the principles which could be developed by means of interinstitutional agreements under Article 295 TFEU with a view to implementing in a coordinated way the new regulation on better lawmaking;
  - (g) making EU documents more accessible by creating more user-friendly systems;
  - (h) ensuring that Parliament leads by example in the EU by ensuring the widest degree of openness, transparency and access to documents;
2. Notes that on 2 December 2009, following the entry into force of the Treaty of Lisbon, the Commission approved a Communication (COM(2009)0665) which updated the legal basis of the original proposal while avoiding any modification of its content;
3. 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)0229 and, on 2 December 2009, following the entry into force of the Treaty of Lisbon, approved a Communication (COM(2009)0665) which updated only the legal basis for the original proposal, avoiding any modification of its content;
  - the Council has adopted its internal rules (Decision 2009/937/EU of 1 December 2009) and a revision of its security regulations (Document 13885/1/09) and the Member States are negotiating an agreement on the protection of classified information exchanged in the interests of the EU (Document 13886/09); wishes to evaluate these texts thoroughly to establish that they do not affect citizens' general right of access or interinstitutional cooperation;
4. Calls on the current and the incoming Council Presidencies to launch an immediate interinstitutional dialogue at political level with a view to drawing up the new regulation on access to documents by 30 June 2010 at the very latest;
5. Welcomes warmly, in this context, the meeting of the interinstitutional committee on access to documents set up in accordance with Article 15 of Regulation (EC) No 1049/2001, which took place on 15 December 2009; notes its conclusions, in particular on:
- (a) holding regular meetings at political level, in the first instance in May 2010 and thereafter at least once a year;
  - (b) setting up technical working groups, comprising IT staff in particular, to examine the possibility of gathering the links to websites that promote citizens' access to documents on one single web page, ensuring the complementarity of the institutions' public registers, gradually approximating the existing search tools, and improving access to all documents linked to a specific legislative file by grouping together all documents of the three institutions belonging to that file;
6. Instructs its President to forward this resolution to the European Council, the Council, the Commission and the parliaments of the Member States.
-