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P8_TA(2016)0202

Public access to documents for the years 2014-2015**European Parliament resolution of 28 April 2016 on public access to documents (Rule 116(7)) for the years 2014-2015 (2015/2287(INI))**

(2018/C 066/04)

The European Parliament,

- having regard to Articles 1, 10, 11 and 16 of the Treaty on European Union (TEU) and Articles 15 and 298 of the Treaty on the Functioning of the European Union (TFEU),
 - having regard to Articles 41 and 42 of the EU Charter of Fundamental Rights,
 - having regard to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽¹⁾,
 - having regard to 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 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies ⁽²⁾,
 - having regard to its position of 15 December 2011 on the proposal for a regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (recast) ⁽³⁾,
 - having regard to its resolution of 11 March 2014 on public access to documents (Rule 104(7)) for the years 2011-2013 ⁽⁴⁾,
 - having regard to the judgment of the European Court of Justice of 17 October 2013 in Case C-280/11 P, *Council of the European Union v Access Info Europe*,
 - having regard to the Commission's 'Better Regulation' package submitted in May 2015,
 - having regard to President Juncker's Political Guidelines for the Commission,
 - having regard to the Commission, Council, and Parliament reports on the application of Regulation (EC) No 1049/2001 in 2013 and 2014,
 - having regard to the Commission's Green Paper on Public Access to Documents held by institutions of the European Community of 2007,
 - having regard to the Annual Report 2014 of the Ombudsman,
 - having regard to Rule 52 and Rule 116(7) of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs, and the opinion of the Committee on Legal Affairs (A8-0141/2016),
- A. whereas full transparency underpins citizens' trust in EU institutions, contributes to developing an understanding of the rights deriving from the legal system of the Union and an awareness and knowledge of the EU decision-making process, including the correct implementation of administrative and legislative procedures;

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

⁽²⁾ OJ L 264, 25.9.2006, p. 13.

⁽³⁾ OJ C 168 E, 16.6.2013, p. 159.

⁽⁴⁾ Texts adopted, P7_TA(2014)0203.

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- B. whereas the right of access to documents is a fundamental right, protected by the Charter of Fundamental Rights and the Treaties and implemented by Regulation (EC) No 1049/2001, with the aim, in particular, of ensuring that this right can be exercised as easily as possible, and of promoting good administrative practices regarding access to documents by ensuring democratic scrutiny of the activities of the institutions and ensuring that they comply with the rules enshrined in the Treaties;

Transparency and democracy

1. Points out that many of the recommendations in its resolution on public access to documents for the years 2011-2013 have not been given a proper follow-up by the three institutions; regrets, in particular, the fact that the EU institutions and bodies have not appointed from within their existing management structures a Transparency Officer, to be responsible for compliance and for improving practices; urges the institutions to do so within the shortest delay;

2. Points out that the EU institutions, in their actions and their policies, have to be based on representative democracy, as laid down in Article 10(1) TEU, and have to ensure compliance with the principles of full transparency, sharing and of informing citizens accurately and in good time; stresses that Article 10(3) TEU recognises participatory democracy as one of the main democratic principles of the EU, thereby highlighting that decisions must be taken as close to the citizens as possible; stresses that when citizens' participation in the decision-making process takes the form of public consultations, the institutions must take into account the outcome of those consultations;

3. Points out that transparency and full access to documents held by the institutions have to be the rule, in accordance with Regulation (EC) No 1049/2001, and that, as has already been laid down by the precedents consistently set by the Court of Justice, exceptions to that rule have to be properly interpreted, taking into account the overriding public interest in disclosure and in the requirements of democracy, including closer involvement of citizens in the decision-making process, the legitimacy of governance, efficiency and accountability to citizens;

4. Considers that the institutions, agencies and other bodies of the European Union still fail to take fully into account of, and to comply with, the rules and the changes provided for in the Lisbon Treaty and the Charter of Fundamental Rights when applying Regulation (EC) No 1049/2001, especially as concerns participatory democracy; notes and welcomes the recent judgments of the Grand Chamber of the Court of Justice in the *Digital Rights Ireland* ⁽¹⁾ and *Schrems* ⁽²⁾ cases, in both of which the Court based itself on the Charter when declaring invalid the Data Retention Directive ⁽³⁾ and the Safe Harbour Decision ⁽⁴⁾, respectively; stresses that actual public access to documents and the management of registers of documents need to be based on standards that comply adequately with Articles 41 and 42 of the Charter;

5. Stresses that privacy and data protection should be respected while ensuring transparency;

6. Recalls that any decision denying public access to documents must be based on clearly and strictly defined legal exemptions, accompanied by reasoned and specific justification, allowing citizens to understand the denial of access, and to make effective use of the legal remedies available;

7. Notes that in order to bring about a legitimate, accountable and democratic political system complying with the rule of law, citizens must have the right to know about, and scrutinise:

— the actions of their representatives, once the latter have been elected or appointed to public office;

— the decision-making process (including any documents circulated, individuals involved, votes cast, etc.);

⁽¹⁾ Joined Cases C-293/12 and C-594/12. Judgment of the Court (Grand Chamber) of 8 April 2014.

⁽²⁾ Case C 362/14. Judgment of the Court (Grand Chamber) of 6 October 2015.

⁽³⁾ Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006.

⁽⁴⁾ Commission Decision 2000/520/EC of 26 July 2000.

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— the way in which public money is apportioned and spent, and the ensuing outcomes;

considers it necessary, therefore, to publish an e-register in which all the aforementioned items are recorded;

8. Urges the Commission to designate a Commissioner to be responsible for transparency and for public access to documents; calls on the Commission Vice-President to present, in the meantime and within the shortest possible delay, an ambitious plan of action regarding transparency and public access to documents, in recognition of the fact that transparency is the cornerstone of better regulation;

9. Regrets that it is still difficult for citizens to gain access to information held by EU institutions, the reason being that there is no common approach among the institutions geared to facilitate access to documents for citizens and based on complete transparency, communication and direct democracy; urges the EU institutions, bodies, offices and agencies to develop further a more proactive approach on transparency by proactively disclosing as many of their documents as possible, in the most simple, user-friendly and accessible way, by having documents translated upon request into other EU official languages, and by establishing proper, simple and inexpensive information access arrangements, including by digital and electronic means, allowing for the needs of people with disabilities; considers, in particular, that the accessibility of information should be improved on by means of easy-to-use interfaces and search systems; calls for the development of a common access point to the portals of the three institutions, building on the pilot project for the online platform for the proactive publication of EU institutions documents, and for harmonising search portals between departments of the same institution (including Directorates-General in the Commission); calls, as well, on the institutions to continue and strengthen the work of expanding knowledge of EU legislation and policies; believes that, to that end, the EU should make full use of the potential offered by new technologies (social networks, smartphone applications, etc.) in order to ensure complete and easy access to information;

10. Regrets that official documents are frequently over-classified; reiterates its position that clear and uniform rules should be established for the classification and declassification of documents; regrets that institutions call for in-camera meetings without proper justification; reiterates its call on the institutions to assess and publicly justify requests for in-camera meetings in accordance with Regulation (EC) No 1049/2001; considers that requests for in-camera meetings in Parliament should be evaluated by Parliament on a case-by-case basis; believes that an independent oversight authority should oversee the classification and declassification processes;

11. Calls on the EU institutions, bodies and agencies to adopt faster, less cumbersome and more accessible procedures for handling complaints against refusals to grant access; considers that a more proactive approach would help ensure effective transparency as well as prevent unnecessary legal disputes that could result in unnecessary costs and burdens for both the institutions and citizens;

12. Urges all institutions, pending its desired revision, to apply Regulation (EC) No 1049/2001, and the subsequent jurisprudence, fully and to the letter and spirit, and to take into account the changes brought about by the Lisbon Treaty and the Charter of Fundamental Rights; calls, in particular, on the Council, including its preparatory bodies, to publish minutes of the meetings of Council working groups and other documents, in the light of the Access Info Europe case, intervening Member States and their proposals; calls on Parliament to make available the agendas and feedback notes of the meetings of Committee coordinators, the Bureau and the Conference of Presidents, as well as, in principle, all documents referred to in these agendas, in accordance with the provisions of Regulation (EC) No 1049/2001, by publishing them on the Parliament's website;

13. Urges all institutions to apply the stronger transparency provisions contained in Regulation (EC) No 1367/2006 when the information requested pertains to the environment, and to abide by their obligations to publish environmental information proactively;

14. Calls on all institutions to evaluate and, where necessary, review their internal arrangements for reporting wrongdoing, and calls for the protection of whistleblowers; calls, in particular, on the Commission to report to Parliament on its experiences with the new rules on whistleblowing for EU staff adopted in 2012, and with their implementing measures;

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Revision of Regulation (EC) No 1049/2001

15. Points out that, as a result of the entry into force of the TEU and the TFEU, the right of access to documents covers all EU institutions, bodies, and agencies; believes, therefore, that Regulation (EC) No 1049/2001 should be updated as a matter of urgency, and its substance amended in the light of the Treaty provisions and the relevant case law of the EU Court of Justice and the European Court of Human Rights; believes, in particular, that it is essential to broaden the regulation's scope to include all the European institutions it currently does not cover, such as the European Council, the European Central Bank, the Court of Justice and all the EU bodies and agencies;

16. Considers it regrettable that the revision of Regulation (EC) No 1049/2001 is still stalled in the Council, and hopes that progress will be achieved as soon as possible; calls on the latter to adopt a constructive position, taking into account the above mentioned position of the European Parliament adopted at first reading on 15 December 2011 with a view to the adoption of a Regulation of the European Parliament and of the Council defining the general principles and limits governing the right of access to documents of Union institutions, bodies, offices and agencies;

17. Recommends the creation, including on the basis of Regulation (EC) No 1367/2006 and Regulation (EC) No 1049/2001, of a single set of principles governing access to documents that would allow for more clarity for citizens;

18. Regrets that little progress has been made to implement Regulation (EC) No 1049/2001 as regards the obligation for the institutions, agencies and other bodies to keep complete registers of documents, as provided for in its Articles 11 and 12 and, ultimately, in the Lisbon Treaty and the Charter of Fundamental Rights; calls for a common approach on registers to be established, and calls on those EU institutions that have not yet established registers of documents to do so, and to implement measures to standardise the classification and presentation of the institutions' documents; reiterates, in this regard, further to a common access point to EU documents through the three institutions' portals, its call for common procedures and criteria for registration and the assignment of an interinstitutional code to each document so that, eventually, a common interinstitutional register, including a dedicated joint database on the state of play of legislative files, could be established;

19. Recalls that, under Articles 1(c) and 15(1) of Regulation (EC) No 1049/2001, the institutions are required to 'promote good administrative practises on access to documents' and to 'develop good administrative practices in order to facilitate the exercise of the rights guaranteed by (the) Regulation'; stresses that transparency is closely connected with the right to good administration, as referred to in Article 298 TFEU and Article 41 of the Charter of Fundamental Rights, and reiterates its call for the adoption of a regulation on the administrative procedure of the EU's own administration⁽¹⁾;

20. Notes that the Treaty of Lisbon has done away with the reference to safeguarding the efficiency of legislative decision-taking;

Transparency of the legislative process

'Trilogues'

21. Points out that transparent law-making is of the utmost importance to citizens; calls on the institutions to make available documents forming part of, or related to, legislative procedures; considers, in particular, that the EU institutions should make as many documents as possible accessible to the public via their websites, and should consider using Your Europe as a single, publicly accessible EU portal to facilitate consultation;

22. Acknowledges the Ombudsman's inquiry into 'trilogues', the established practice by which most EU legislation is adopted; urges the Ombudsman, within her remit under the Treaties and under the Ombudsman's Statute, to make full use of her powers of investigation;

⁽¹⁾ European Parliament resolution of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union (OJ C 440, 30.12.2015, p. 17).

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23. Points out that the use of trilogues, although not formally foreseen by the Treaties, has become the acknowledged way of reaching consensus among the co-legislators and speeding up the legislative procedure laid down in the Treaty; notes, as a result, that conciliation committees are used only at third reading as a last resort;

24. Deplores the fact that citizens have no power to scrutinise trilogue negotiations; expresses concern about the abuses to which this legislative practice might lead, in particular with regard to the introduction of new elements of legislation during trilogues without a Commission proposal or Parliamentary amendment serving as a basis, by which means the ordinary legislative procedure, and public scrutiny, can be circumvented;

25. Deplores the fact that, owing to leaks of formal and informal trilogue documents, unequal access to documents, and therefore to the legislative process, is enjoyed by knowledgeable and well-connected interest groups; notes that document leaking would occur to a lesser extent if trilogue documents were published proactively on an easily accessible platform without delay;

26. Recalls that the case law of the Court of Justice of the European Union recognises the risk of external pressure, and that this can be a legitimate ground for restricting access to documents relating to the decision-making process, on the condition that the reality of such external pressure is established with certainty, and evidence is adduced to show that there was a reasonably foreseeable risk that the decision to be taken would be substantially affected owing to that external pressure⁽¹⁾; is concerned that the present practice favours broader access by lobbyists to decisive phases of the legislative process than by the general public;

27. Points out that, while trilogues are important and effective, the procedures currently applicable to them give rise to concerns as regards the openness in the legislative procedure; calls on the institutions involved to ensure greater transparency of informal trilogues to strengthen democracy by allowing citizens to scrutinise the relevant information which has formed the basis of a legislative act, as stated by the Court of Justice of the European Union in the joined cases *Sweden and Turco v Council*, while ensuring adequate space to think for the co-legislators; calls on the EU institutions to increase reporting in the competent parliamentary committee on the state of play of trilogue negotiations; considers that where documents are created in the framework of trilogues, such as agendas, summaries of outcomes, minutes and general approaches in the Council, as available, such documents are related to legislative procedures and cannot, in principle, be treated differently from other legislative documents; takes the view that a list of trilogue meetings, and of such aforementioned documents, should be made directly accessible on Parliament's website; recalls that the future interinstitutional agreement on better law-making includes a database on legislative files and, if adopted, would also address the appropriate handling of trilogues;

Plenary amendments

28. Deplores the fact that when plenary amendments co-signed by at least 40 Members are registered, only the names of some of the co-signatories are published; considers that the names of all the co-signatories should be published;

Mandatory lobby register

29. Calls on the Commission to submit, without any further delay, its proposal for an interinstitutional agreement establishing a mandatory interinstitutional register of interest groups, and of local authorities and regional organisations, operating within the institutions, and calls for that matter to be given highest priority; calls for the register to contain detailed information showing who is representing what interest group, for what purpose and with what resources and funding;

30. Encourages MEPs and the Council's representatives to follow the Commission practice, as established by its decision of 25 November 2014, to publish information about meetings between them or their staff, on the one hand, and stakeholders and civil society, on the other;

⁽¹⁾ Case T-144/05, *Pablo Munoz v Commission*, paragraph 86.

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31. Calls on Parliament, as a first step in this regard, to make available, to those MEPs who wish to report on their contacts with lobbyists, a template for Rapporteurs that can be annexed to their reports, as well as space for this type of information on the webpages of Parliament referring to individual MEPs;

Delegated acts

32. Points out that, in accordance with Regulation (EC) No 1049/2001 and in order to guarantee full democratic and transparent parliamentary control, access should likewise be granted to documents produced when powers are delegated (delegated acts), since these make up a substantial portion of European legislation, for which reason adequate and transparent parliamentary and democratic control ought to be fully guaranteed; particularly deplores, in this context, the lack of transparency of the European supervisory authorities (EBA, EIOPA, ESMA) owing to lack of involvement on the part of the co-legislators; considers it disappointing that no single register of all second-level legislation has yet been established, and calls on the Commission to set one up without delay;

International agreements

33. Notes that international agreements have binding force and an impact on EU legislation, and points to the need for negotiations to be transparent throughout the entire process, implying that the institutions should publish the negotiating mandate conferred on the EU negotiator without undermining the EU's negotiating position; considers that documents related to international agreements should be public in principle, without prejudice to legitimate exceptions and without undermining the trust necessary between the parties concerned to achieve effective negotiations; regrets that the Commission and the Council routinely classify all documents relating to negotiations, thereby limiting citizens' access to information; maintains that the public should be given access to all relevant negotiating documents, including those already agreed on, with the exception of those which are considered sensitive, with a clear justification on a case-by-case basis, in accordance with Article 9 of Regulation (EC) No 1049/2001;

34. Points out to the Commission that, under Article 218 TFEU, Parliament shall be fully and immediately informed at every stage while negotiations are taking place; calls on the Commission to assess, at every stage, which documents and what information can proactively be made public;

Transparency of the administrative process

35. Points out that transparency strengthens, and helps to give effect to, the principle of good administration, as set out in Article 41 of the Charter and Article 298 TFEU; calls, therefore, on the EU institutions to ensure that their internal administrative procedures achieve that aim;

36. Calls on the EU institutions to draw up common rules governing the conduct of administrative procedures and the procedures for presenting, classifying, declassifying, registering and disclosing administrative documents; hopes that a legislative proposal for that purpose can be submitted without delay;

Infringement procedures

37. Deplores the lack of transparency regarding letters of formal notice and infringement procedures against Member States; calls, in particular, for documents sent by the Commission to Member States in connection with such procedures, and the related replies, to be made accessible to the public; calls, furthermore, for information on the execution of judgments of the Court of Justice of the European Union to be published proactively;

Management of Structural Funds and other issues

38. Calls on the Member States to ensure that information about negotiations on national and regional operational programmes is made fully accessible and genuinely transparent;

39. Believes that full data transparency and accessibility are essential to prevent and combat any abuse and fraud; calls, in this context, on the Commission to make it compulsory to publish particulars on all recipients of money from the Structural Funds, including subcontractors; reiterates that full transparency of public expenditure in the EU is crucial to ensure accountability and fight corruption;

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40. Calls on the Commission to monitor that Member States comply with the information and reporting obligations set out in Regulation (EU) No 1303/2013 and, if necessary, to impose the penalties applicable for non-fulfilment of those obligations;
41. Points out that, while progress has been achieved in providing information on Parliament's website regarding the different allowances to which Members are entitled and the rules by which they are governed, this policy should be pursued taking into account best practices in the national parliaments and the actions already undertaken by individual Members; encourages all Members, therefore, to become involved in this endeavour by proactively disclosing information relating to their specific activities and use of expenditure, so that Parliament remains at the forefront of efforts to achieve transparency and openness in the EU, and with a view to better public accountability of public funds;
42. Notes that, in a change to its policy on transparency, the ECB now publishes the minutes of meetings of the ECB Governing Council, but regrets that the ECB is still lagging the world's other central banks in this regard; awaits the implementation of further measures to improve the transparency of its communication channels;
43. Hopes, furthermore, that, in the future, all documents concerning decisions taken in the Asset Quality Review process will be made public, to guarantee a level playing field across the EU; hopes that transparency requirements will also be applied to the Single Resolution Mechanism (SRM), in accordance with the relevant provisions of the SRM Regulation, applicable from 1 January 2016;
44. Invites the Interinstitutional Committee established by Article 15(2) of Regulation (EC) No 1049/2001 to work more actively and to report to the competent committees on the issues discussed; calls on it to meet more regularly, and to open internal discussions and deliberations by, and inviting and considering submissions from, civil society, the European Ombudsman and the European Data Protection Supervisor; calls on it to address, as a matter of urgency, the issues mentioned in this resolution;
45. Considers it essential that the EU agencies apply a common policy on conflicts of interest; notes that, in some cases, the policy applied to date includes provisions concerning publication of the CVs and declarations of interests of the Director and of senior management; observes with concern, however, that the obligation to publish CVs and declarations of interest does not apply to experts; calls on the agencies to extend this obligation to experts;

Follow up

46. Requests the Commission and calls on the Secretary-General of the European Parliament to inform Parliament about the implementation of the recommendations in this resolution;
47. Invites the Commission to harmonise the criteria regarding the publication of the beneficiaries of the Structural Funds;

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48. Instructs its President to forward this resolution to the Council and the Commission, the Ombudsman, the Data Protection Supervisor and the Council of Europe, and to the governments and parliaments of the Member States.
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