



2022/2015(INI)

27.3.2023

OPINION

of the Committee on Constitutional Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on public access to documents - annual report for the years 2019-2021
(2022/2015(INI))

Rapporteur for opinion: Miapetra Kumpula-Natri

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SUGGESTIONS

The Committee on Constitutional Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- A. whereas transparency and openness in decision-making are among the democratic principles enshrined in the EU Treaties; whereas transparency, integrity and accountability, which are a precondition for citizens' trust in EU institutions, crucially contribute to the fight against corruption and maladministration; whereas Parliament called for an ambitious ethics body in its resolution of 16 September 2021 on strengthening transparency and integrity in the EU institutions by setting up an independent EU ethics body¹;
- B. whereas Article 15(3) of the Treaty on the Functioning of the European Union, which was introduced by the Lisbon Treaty, extends the scope of the transparency obligation to all institutions, bodies, offices and agencies, while the Court of Justice of the European Union (CJEU), the European Central Bank and the European Investment Bank are only covered for the exercise of their administrative tasks; whereas the Conference on the Future of Europe included the guarantee of a broader right of access to documents among its proposals and measures on decision-making;
- C. whereas the purpose of 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 documents² is to confer on the public the widest possible right of access to the documents of the institutions in order to allow them to effectively exercise their right of scrutiny over the work and activities of the EU institutions; whereas, in light of this right and recent case-law, any exceptions have to be individually assessed, interpreted and applied strictly; whereas the institutions have the obligation to demonstrate how disclosure would specifically and actually undermine the interests protected by the exceptions;
- D. whereas in 2021 the most frequent reason for Council's refusal to grant access to documents was the protection of the Council's decision-making process, a total of 223 cases; whereas out of 1 327 legislative documents classified as 'LIMITE', 839 were eventually made public on request, which indicates that 'LIMITE' is used excessively and not reviewed sufficiently by the Council with a view to making them public and increasing transparency;
 1. Insists that the EU institutions have the obligation to implement Article 15(3) TFEU in line with democratic principles, in particular those laid down in Article 10(3) of the Treaty on European Union and Article 42 of the Charter of Fundamental Rights of the European Union; emphasises that transparency is fundamental for ensuring the accountability and the democratic scrutiny of the EU institutions; stresses that the EU institutions must work as closely as possible to citizens and that access to documents is

¹ OJ C 117, 11.3.2022, p. 159.

² OJ L 145, 31.5.2001, p. 43.

a key tool for ensuring citizen's trust in the Union;

2. Stresses the need to ensure that citizens are able to follow, understand and participate in order to bring them closer to the decision-making process in the Union; emphasises that, in order to make use of their right enshrined in Article 15(3) TFEU, citizens need to be given access to EU institutions' documents in all official EU languages; invites all EU institutions to ensure that documents requested are provided in the official EU language of the applicant's choice;
3. Regrets that the EU institutions still fail to fully comply with Regulation (EC) No 1049/2001 and that this Regulation has still not been updated in line with the new provisions on transparency of the Treaty of Lisbon; emphasises that any update to Regulation (EC) No 1049/2001 should ensure that its scope is extended to all EU institutions, bodies, offices and agencies in accordance with Article 15(3) TFEU, faithfully integrate the principles established by case-law and adapt the Regulation to technological developments, with the ultimate aim of improving and expanding access to EU documents as well as enhancing transparency and accountability in line with social, cultural and political developments; urges the Council to unblock the 2008 recast of Regulation (EC) No 1049/2001;
4. Emphasises that increased transparency in the Union's decision-making is the result of democratic development and a culture of participation; recalls that a balanced framework is needed in which the interests of the Union are safeguarded and that this framework is consistent for all EU institutions;
5. Calls for all EU institutions to ensure that all official documents are systematically provided in an open, user-friendly and machine-readable format, which is especially essential for numerical or financial data, in particular if it concerns the implementation of Union policies; calls for all EU institutions to also make data available in an open, machine-readable format if that data has not already been published in such a format and if they have it in such a format; invites all EU institutions to consider increasing the number and enlarging the categories of documents they directly make available in their public registers and to improve the findability and accessibility of the documents on their internet pages;
6. Commits to ensuring that Parliament's documents are easily accessible, irrespective of their medium, to all citizens, including the blind and visually impaired; calls, in particular, for Rule 122(3) of its Rules of Procedure to be amended to ensure the availability of documents in an open, user-friendly and machine-readable format;
7. Calls for a user-friendly system to be made available on Parliament's website which will allow voting results for every roll-call vote, connected to the text voted on, to be filtered by political group and MEP; calls, further, for roll-call vote results, MEP attendance data and texts voted on to be made available in machine-readable formats;
8. Insists that all EU institutions participating in trilogues should, as specified by Article 12(2) of Regulation (EC) No 1049/2001, make legislative documents, that is to say documents drawn up or received in the course of procedures for the adoption of acts which are legally binding in or for the Member States directly accessible, unless their disclosure would seriously undermine the decision-making process; highlights the

importance of the recent judgment in Case T-163/21 on access to legislative documents of Council's working groups³, in which the CJEU concludes that access to legislative documents must be as wide as possible and that exceptions could apply only if access to such documents would specifically, effectively and in a non-hypothetical manner seriously undermine the possibility of reaching an agreement on the legislative proposal in question; calls on the Council to fully comply with this judgment; calls for all EU institutions to fully comply with the CJEU judgment in Case T-540/15 on access to trilogue documents⁴;

9. Is of the opinion that the categories of documents which are to be made directly accessible through Parliament's public register shall include preparatory legislative documents regardless of whether they were drafted by Parliament alone or together with the other institutions, such as political and technical trilogue documents, including all versions of the joint multi-column document referred to in the Code of Conduct for negotiating in the context of the ordinary legislative procedure, subject to the exceptions laid down in Regulation (EC) No 1049/2001 and the case-law of the General Court and the Court of Justice; insists that the systematic publication of the mandate for starting trilogue negotiations and of Council's final position endorsing the outcome of the negotiations is a bare minimum, and that in order to mirror the transparency of Parliament in legislative negotiations, the Council should also systematically record the identity of Member States when they express their positions in Council;
10. Regrets the fact that the Council systematically refuses to grant access to its internal documents under the pretext of protecting its decision-making process; recalls that the Council, like every other institution, has the obligation to demonstrate how access to a document would harm a legitimate interest protected by an exception and to explain why it considers this harm substantial enough to override the public interest in disclosure; stresses that the lack of transparency affects both public scrutiny and cooperation with the other institutions, notably Parliament;
11. Insists that the Council should improve its rules and procedures on legislative transparency, including accessibility and classification of legislative documents with the aim of working as openly as possible; calls on the Council to follow the Ombudsman's recommendation by substantially reducing the number of legislative documents classified as 'LIMITE' and to review this classification regularly;
12. Recalls that the CJEU has observed that it is precisely transparency on legal advice that contributes to conferring greater legitimacy on the institutions in the eyes of European citizens and to increasing their confidence in them by allowing divergences between various points of view to be openly debated⁵;
13. Underlines that the European Ombudsman plays an important role in facilitating citizens' access to documents, in particular when the access has been partially or completely refused by an EU institution or body, and welcomes the fast-track procedure for access to documents complaints that can lead to a recommendation to the institution

³ Judgment of 25 January 2023, *Emilio De Capitani v Council*, T-163/21, ECLI:EU:T:2023:15.

⁴ Judgment of 22 March 2018, *Emilio De Capitani v European Parliament*, T-540/15, ECLI: EU:T:2018:167.

⁵ Judgment of 4 September 2018, *ClientEarth v Commission*, C-57/16 P, EU:C:2018:660.

concerned on the full or partial disclosure of the requested document(s);

14. Recalls that a corruption scandal such as the one affecting the EU institutions may increase the interest of citizens and organisations in access to documents; calls for the institutions to prioritise transparency and avoid opaque practices;
15. Stresses that the pandemic and the changes in the institutions' working procedures may have slowed down the processing of requests for access to documents; stresses that the institutions must put in place mechanisms to ensure that the highest level of transparency and access to documents is maintained, even in the event of a crisis;
16. Notes that in 2021, the Commission refused to comply with a journalist's request for access to text messages exchanged between the Commission President and the CEO of a pharmaceutical company regarding the purchase of COVID-19 vaccines; deplors the maladministration by the Commission in this case, as set out in the Ombudsman's finding; supports the Ombudsman's practical recommendations on how to record text and instant messages sent or received by staff members in a professional capacity and calls on the Commission to implement these recommendations; insists on a broad interpretation of the concept of 'document', which include such work-related text and instant messages; recalls that text messages are considered documents under Regulation (EC) No 1049/2001, regardless of the registration criteria used by the Commission or any other EU institution, body, office or agency;
17. Stresses that European citizens, as taxpayers, have a legitimate interest in knowing how EU funds are used; regrets, in this context, that the written notification sent to Hungary in connection with the application of Article 6(1) of Regulation (EU Euratom) 2020/2092 was not made public on the grounds that the exceptions referred to in Article 4(1)(a) fourth indent, (2) second and third indents and (3) of Regulation (EC) No 1049/2001 were applicable, relating in particular to the protection of the public interest of the Union, the protection of court proceedings and legal advice, and the objectives of inspection, investigation and audit activities;
18. Recalls proposal 39 of the Conference on the Future of Europe, calling for 'ensuring transparency of decision-making by allowing independent citizens' observers to closely follow the decision-making process, guaranteeing broader right of access to documents, and develop on this basis stronger links and an enhanced dialogue between citizens and the EU institutions'.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	22.3.2023
Result of final vote	+: 23 -: 2 0: 0
Members present for the final vote	Gerolf Annemans, Gabriele Bischoff, Damian Boeselager, Leila Chaibi, Włodzimierz Cimoszewicz, Gwendoline Delbos-Corfield, Salvatore De Meo, Charles Goerens, Sandro Gozi, Zdzisław Krasnodębski, Victor Negrescu, Max Orville, Paulo Rangel, Domènec Ruiz Devesa, Jacek Saryusz-Wolski, Pedro Silva Pereira, Sven Simon, Rainer Wieland
Substitutes present for the final vote	Gunnar Beck, Pascal Durand, Othmar Karas, Gilles Lebreton, Maite Pagazaurtundúa
Substitutes under Rule 209(7) present for the final vote	François-Xavier Bellamy, Javier Zarzalejos

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

23	+
ID	Gerolf Annemans, Gunnar Beck, Gilles Lebreton
PPE	François-Xavier Bellamy, Salvatore De Meo, Othmar Karas, Paulo Rangel, Sven Simon, Rainer Wieland, Javier Zarzalejos
Renew	Charles Goerens, Sandro Gozi, Max Orville, Maite Pagazaurtundúa
S&D	Gabriele Bischoff, Włodzimierz Cimoszewicz, Pascal Durand, Victor Negrescu, Domènec Ruiz Devesa, Pedro Silva Pereira
The Left	Leila Chaibi
Verts/ALE	Damian Boeselager, Gwendoline Delbos-Corfield

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ECR	Zdzisław Krasnodębski, Jacek Saryusz-Wolski

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention