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Recommendations for the Reform of Regulation 1049/2001

on public access to European Parliament, Council and Commission documents

On 15 December 2011, the European Parliament adopted its proposal for the future amendment of EU Regulation 1049/2001 on public access to European Parliament, Council and Commission documents, thus breaking the stalemate that had existed since the Commission presented its initial proposal in April 2008.

The Danish Presidency of the EU is aiming to complete the revision of this Regulation, Access Info Europe has prepared an analysis of the Commission proposal, the Parliament proposal, and the current Regulation 1049/2001, with a view to making specific recommendations based on existing international access to information standards, including the laws of the EU region and the Council of Europe Convention on Access to Official Documents.

	Regulation 1049 (2001)	**Commission (2008)**	**European Parliament (2011)**	**Access Info Europe comments / recommendations**
Scope				
1. Beneficiaries	*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, subject to the principles, conditions and limits defined in this Regulation.*	*Any natural or legal person shall have a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.*	*Any natural or legal person or any association of legal or natural persons shall have a right of access to documents of the institutions, bodies, offices and agencies, subject to the principles, conditions and limits defined in this Regulation.*	1. The right of access to information has been recognised as a fundamental human right which should be exercised by all persons irrespective of their residence or nationality. The amendment in this respect proposed by each of the Commission and the Parliament is therefore welcome. 2. Comparative international standards extend the right to legal persons which

				should also be irrespective of their place of registration. As to granting the right to associations of legal or natural persons this is positive for encouraging public officials to respond to any request and permitting associations to file appeals in the rare case that they are not also legal persons, but it is not absolutely necessary as any member of the association can request the information. » **Recommendation**: Adopt the Commission's language for requesters
2. Institutional Scope	*This Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union.*	*This Regulation shall apply to all documents held by an institution, namely, documents drawn up or received by it and in its possession concerning a matter relating to the policies, activities and decisions falling within its sphere of responsibility, in all areas of activity of the European Union.*	*This Regulation shall apply to all documents held by a Union institution, body, office and agency, that is to say documents drawn up or received by it and in its possession, in all areas of activity of the Union. This Regulation shall apply to the Court of Justice of the European Union, the European Central Bank and the European Investment Bank, only in the course of the performance of their administrative tasks.*	In line with the TFEU post Lisbon, the scope of the right should now include all EU institutions, bodies, offices and agencies. The Parliaments language best reflects this. Access Info Europe notes that the TFEU limits access to documents held by the European Court of Justice, the European Central Bank and the European Investment Bank to their administrative functions and finds this a regrettable limitation on the right of access to information. The Commission's proposal to limit the scope to documents specifically relating to policies, activities and decisions falling under that institution's responsibility is a significant limitation which risks misinterpretation and is not permitted by the TFEU. » **Recommendation**: The provision should be redrafted to reflect the

				language in the TFEU, simply stating that it applies to all “documents of the Union institutions, bodies, offices and agencies.”
3. Definition of a document	*“Document”’ shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility;*	*“Document” means any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) drawn-up by an institution and formally transmitted to one or more recipients or otherwise registered, or received by an institution; data contained in electronic storage, processing and retrieval systems are documents if they can be extracted in the form of a printout or electronic-format copy using the available tools for the exploitation of the system;*	*“Document” shall mean any data content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter falling within the sphere of responsibility of a Union institution, body, office or agency. Data contained in electronic storage, processing and retrieval systems, including external systems used for the institution's work, constitute a document, notably if they can be extracted using any reasonably available tools for the exploitation of the system concerned.* *An institution, body, office or agency that intends to create a new electronic storage system, or to substantially change an existing system, shall evaluate the likely impact on the right of access, ensure that the right of access as a fundamental right is guaranteed, and act so as to promote the objective of transparency. The functions for the retrieval of information stored in electronic storage systems shall be adapted in order to satisfy requests from the public*	The Commission's proposal limits the right in a way which is inconsistent with international standards because it makes an artificial distinction between documents and electronically stored data. The series of caveats about the document having been “drawn up”, “formally transmitted” or “otherwise registered or received by an institution” are all unnecessary and not in line with the TFEU. The Parliament’s proposal attempts to correct this although it is still a rather cumbersome formulation. The Parliament's proposal is welcome in that it calls for future disclosure to be designed into databases, but it could go further and specifically call for access to full databases (subject to the exceptions) in an open, machine-readable format, free of copyright restrictions. Access Info Europe notes that The Council of Europe Convention on Access to Official Documents has the following clear and simple definition: "*all information recorded in any form, drawn up or received and held by public authorities."* Similarly, the Aarhus Convention as transposed to Regulation (EC) No 1367/2006 of the

				European Parliament and of the Council of 6 September 2006 has the following definition of information: “any information in written, visual, aural, electronic or any other material form”. The Directive on Re-use of public sector information has a concise and comprehensive definition of a document: *‘document’ means:* *(a) any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording);* *(b) any part of such content.* **» Recommendation**: The definition of a document should be as broad as possible: ‘document’ means *any content whatever its medium* The language should make clear that this covers entire databases without introducing any language which in any way narrows the right provided for in the TFEU. In addition, consistent with the open government standards which the Commission is currently promoting, a requirement should be introduced to provide access to documents in an open, machine-readable format, free of copyright restrictions and without limitations on re-use.

Exceptions				
4. HARM AND PUBLIC INTEREST TEST	*The institutions shall refuse access to a document where disclosure would undermine the protection of:* *— commercial interests of a natural or legal person, including intellectual property,* *— court proceedings and legal advice,* *— the purpose of inspections, investigations and audits,* *unless there is an overriding public interest in disclosure.* The public interest test also applies to the protection of the decision-making process in the current version of Regulation 1049/2001.	*The exceptions under paragraphs (2) and (3) shall apply unless there is an overriding public interest in disclosure. As regards paragraph 2(a) (commercial interests of a natural or legal person) an overriding public interest in disclosure shall be deemed to exist where the information requested relates to emissions into the environment.*	*When balancing the public interest in disclosure under paragraphs (1) to (3), an overriding public interest in disclosure shall be deemed to exist where the document requested relates to the protection of fundamental rights and the rule of law, sound management of public funds, or the right to live in a healthy environment, including emissions into the environment. An institution, body, office or agency invoking one of the exceptions has to make an objective and individual assessment and show that the risk to the interest protected is foreseeable and not purely hypothetical, and define how access to the document could specifically and effectively undermine the interest protected.*	All exceptions should be subject to a harm test and to an overriding public interest test. This is required, inter alia, by the legitimate limits on freedom of expression and information in the European Convention on Human Rights Article 10, and by the Council of Europe Convention on Access to Official Documents. The Parliament's proposal attempts to make Regulation 1049/2001 comply with this international standard. However, the wording is somewhat awkward as it could be misinterpreted to mean that there is only a public interest when it comes to the issues listed. The Commission's proposal merely incorporates the Aarhus regulation into the revised Regulation 1049/2001, but fails to introduce a general public interest test which would apply to all exceptions. **» Recommendation**: Access Info Europe recommends that Regulation 1049 be modified to make clear that: 1) All exceptions are subject to both a harm and a public interest test. 2) That the public interest in disclosure shall always outweigh

				any potential harm caused by publication when the document requested relates to, inter alia, the protection of fundamental rights and the rule of law, sound management of public funds, or the right to live in a healthy environment, and emissions into the environment.
5.a Court submissions	*The institutions shall refuse access to a document where disclosure would undermine the protection of: court proceedings and legal advice, unless there is an overriding public interest in disclosure*	*This Regulation shall not apply to documents submitted to Courts by parties other than the institutions.*	Parliament proposes to retain original language	The insertion by the Commission of what are effectively new exceptions in the Regulation is problematic for the following reasons: 1. The protection of court proceedings is already included in the regulation under Article 4. Investigations are also included in Article 4;
5.b Investigations or proceedings of individual scope	*The institutions shall refuse access to a document where disclosure would undermine the protection of: the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure*	*Without prejudice to specific rights of access for interested parties established by EC law, documents forming part of the administrative file of an investigation or of proceedings concerning an act of individual scope shall not be accessible to the public until the investigation has been closed or the act has become definitive. Documents containing information gathered or obtained from natural or legal persons by an institution in the framework of such investigations shall not be accessible to the public.*	Parliament proposes to retain original language	2. Blanket exceptions, which are based on the author or nature of the document or source of the information rather than the harm that disclosure of all or part of the content would cause, run counter to international and comparative standards on the right to information; 3. These provisions lack a harm and a public interest test, and so will automatically reduce the number of publicly available documents. This was not the intention of Regulation 1049/2001 and is not consistent with international standards. Access Info Europe also notes that the current rules for access to documents submitted to the Courts are very

				outdated and should be reformed to provide access in line with the practices of, for example, the European Court of Human Rights. **» Recommendation**: Retain the original language in Regulation 1049 and review the right of access to documents submitted to the courts, including by extending the scope of the right to know to all information held by the Courts.
6. Public Security exemption	*The institutions shall refuse access to a document where disclosure would undermine the protection of: the public interest as regards:* *— public security,*	*The institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards: public security including the safety of natural or legal persons* (**NOT** subject to public interest test)	*The institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards: public security of the Union or of one or more of the Member States* (subject to public interest test)	It is legitimate under international standards to consider the application of exceptions which protect both national security (territorial integrity) and public security (which does already include the safety of natural persons and property). It is not clear why the Commission felt necessary to expand the language when the words “public security” should be sufficient given the international law definitions of this concept. The amendment from the Parliament refers to a concept which seems to be more in lines with national security although the word public security is used, perhaps because the Union is not a nation; the Parliament also refers to the member states. In principle this exceptions is legitimate as it is indeed possible that an EU body will hold information which may be withheld in the name of protecting the national security of one or more Member States. The danger with any expansion of

				wording is that it could encourage broader application of the exception. Particularly problematic is that fact that no public interest test is contemplated in the Commission's version. We also note that the Council of Europe Convention on Access to Official Documents states, with respect to national security, that *"The notion of national security should be used with restraint. It should not be misused in order to protect information that might reveal the breach of human rights, corruption within public authorities, administrative errors, or information which is simply embarrassing for public officials or public authorities."* **» Recommendation**: Consider whether it is necessary to clarify the exceptions for both security of the Union / national security and for public security / safety (*ordre publique*) and ensure that they are subject to a test of serious harm and an overriding public interest test.
7. Legal Advice	*The institutions shall refuse access to a document where disclosure would undermine the protection of: court proceedings and legal advice, unless there is an overriding public interest in disclosure*	*The institutions shall refuse access to a document where disclosure would undermine the protection of: legal advice and court, arbitration and dispute settlement proceedings*	*The institutions, bodies, offices and agencies shall refuse access to a document where disclosure would undermine the protection of: legal advice relating to court proceedings* *(subject to public interest test)*	Access Info Europe notes that there are two separate issues here. One is the legitimate protection of court proceedings which is an interest recognised in comparative international law as reflected in the Council of Europe Convention on Access to Official Documents. This permits refusing access to information on the grounds of protecting from harm "*the equality of parties in court proceedings and the*

				effective administration of Justice." The other issue is whether there is a need to protect legal advice per se. The drafters of the original Regulation 1049 included this but the European Court of Justice has established that it is not an absolute exception. International law does not recognise "legal advice" as a legitimate interest per se. Furthermore, in the specific context of the European Union institutions, legal advice is more often than not used for decision-making on policies and relied upon for the legislative process. The Commission has proposed extending the protection of court proceedings to cover arbitration and dispute settlement proceedings. It is not clear why this is necessary nor what the justification should be, given that Regulation 1049 already contains a protection of "investigations" in Article 4.2. The Commission has also removed the public interest test, which is unacceptable. **» Recommendation**: Adopt wording along the lines of the Council of Europe Convention on access to Official Documents. Legal advice per se should not be exempted unless it would be likely to cause harm to ongoing court proceedings, in which case the court proceedings exception should be invoked.

				Ensure that this exception is subject to both a harm and a public interest test, which should be applied with regards to the Turco ruling. The jurisprudence of the European Court of Justice has specified that during the legislative process legal opinions should be available unless their contents are particularly sensitive or wide in scope.
8.a Selection procedures	This is not contemplated in the original Regulation 1049/2001	*The institutions shall refuse access to a document where disclosure would undermine the protection of: the objectivity and impartiality of selection procedures.*	*The institutions, bodies, offices and agencies shall refuse access to a document where disclosure would undermine the protection of: The objectivity and impartiality of public procurement procedures until a decision has been taken by the contracting institution, body, office or agency, or the proceedings of a selection board leading to the recruitment of staff until a decision has been taken by appointing authority*	This exception cannot be found in the Council of Europe Convention on Access to Official Documents and it is not clear why it needs to be introduced into Regulation 1049/2001. There is already a strong protection of the decision-making process in Article 4.3 of Regulation 1049. Both selection of staff and public procurement are decision-making processes. There are two problems which could result from the proposed amendment. The first is to reduce access to information about selection procedures and public procurement which, in the context of the need for transparency to address concerns about revolving doors and probity in public spending, would be a worrying result. The second is that this reform would undermine the existing Article 4(3), rendering it meaningless. Access Info Europe believes that protection of decision making is a legitimate exception but that if a new series of specific exceptions were to be introduced, this would strengthen the

				argument for abolishing the existing 4(3). **» Recommendation**: Access Info Europe recommends that neither the Commission nor the Parliament's proposals be accepted, and that the Regulation remain untouched in this respect.
8.b Decision-making process (before decision taken)	*Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.*	*Access to the following documents shall be refused if their disclosure would seriously undermine the decision-making process of the institutions: documents relating to a matter where the decision has not been taken;*	*Access to documents drawn up by an institution for internal use or received by an institution relating to a matter where a decision has not yet been taken by that institution shall be refused only if their disclosure would, due to their content and the objective circumstances of the situation, manifestly and seriously undermine the decision-making process.*	International standards permit an exception to protect the decision making process from serious harm provided that the exception is also subject to a public interest test. The Lisbon treaty, however, requires that "Union institutions, bodies, offices and agencies shall conduct their work as openly as possible" so the use of any decision making exceptions should be very limited. The Commission's proposal is problematic in that it re-orders the provision in a way that may encourage the application of this exception. It is also unnecessary as it makes a difference between before and after the decision has been taken which is not the main criterion, rather the main criterion is the harm to decision making which in most cases will be before a decision has been taken but in very rare cases might be after. By listing documents which might be excluded after a decision has been taken, the Commission is diverting attention from the requirement that, on a case-by-case basis, it must be
8.c Decision-making process (after decision taken)	Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-	*documents containing opinions for internal use as part of deliberations and preliminary consultations within the institutions concerned, even after the decision has been taken.*	Deleted by the Parliament	

	making process, unless there is an overriding public interest in disclosure.			demonstrated that serious harm would be likely to result irrespective of the nature of the document but rather based on its content. The Parliament's language attempts to achieve three things: i) Limit the application to before the decision is taken. Whilst this would apply in 99% of cases, there will be some occasions where it's legitimate to withhold information afterwards as it could harm a future decision. Therefore the distinction in time is not legitimate. ii) The Parliament is also seeking to ensure that the test is correctly applied, by adding language such as "the objective circumstances of the situation" and "manifestly" which sends a clear signal to the public official who will apply this exception, but at the same time it's not absolutely essential to have it. What is essential is to have is "seriously undermine the decision-making process". iii) ensure that documents are not automatically excluded just because they relate to a decision-making process. Hence the phrase "due to their content". This is not necessary as it is obvious that the exception should apply to the content of the document and while we understand the Parliament's concern, we still don't believe that this language is essential. **» Recommendation**: retain the original Regulation 1049 language;

				require that the exception only apply until a decision has been taken except in very rare cases when it can be demonstrated that the exception will continue to apply after a decision has been taken.
9. Privacy and personal data	*The institutions shall refuse access to a document where disclosure would undermine the protection of: privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.*	*Names, titles and functions of public office holders, civil servants and interest representatives in relation with their professional activities shall be disclosed unless, given the particular circumstances, disclosure would adversely affect the persons concerned. Other personal data shall be disclosed in accordance with the conditions regarding lawful processing of such data laid down in EC legislation on the protection of individuals with regard to the processing of personal data.*	*Personal data shall not be disclosed if such disclosure would harm the privacy or the integrity of the person concerned. Such harm shall not be deemed to be caused:* *- if the data relate solely to the professional activities of the person concerned unless, given the particular circumstances, there is reason to assume that disclosure would adversely affect that person;* *- if the data relate solely to a public person unless, given the particular circumstances, there is reason to assume that disclosure would adversely affect that person or other persons connected with him or her;* *- if the data have already been published with the consent of the person concerned.* *Personal data shall nevertheless be disclosed if an overriding public interest requires disclosure. In such a case, the institution, body, office or agency concerned shall be required to specify the public interest. It shall give reasons why, in the specific case, the public*	The right of access to documents is now recognised as a fundamental right, and hence has to be balanced against the right to private life (Article 7 Charter of Fundamental Rights) and to protection of personal data (Article 16 of the TFEU). This was not previously the case, as reflected in the jurisprudence of the European Court of Justice (for example, the *Bavarian Lager* case). Any reform of the Regulation 1049 language should be designed to achieve the correct balance between what are now two rights. The Commission's proposal can by no means be accepted as it deletes the right to privacy and integrity exception, and incorrectly applies the extremely weak harm test of "adverse effect" to processing of personal data; there is no public interest test in the Commission's proposal. The Parliament's proposal correctly focuses on privacy and integrity of the person, and reflects the opinion of the European Data Protection Supervisor,

			interest outweighs the interests of the person concerned. *Where an institution, body, office or agency refuses access to a document on the basis of this paragraph, it shall consider whether it is possible to grant partial access to that document.*	which maintains the "harm" test and introduces a public interest test. The Parliament's proposal is, however, a somewhat cumbersome formulation which could be simplified to reflect the harm and public interest tests. **» Recommendation**: Seek advice from the EDPS as he is the European Union's independent expert on the subject, and is uniquely qualified to propose language which adequately protects both fundamental rights. The wording could be very simple: "*The institutions shall refuse access to a document where disclosure would harm the protection of: privacy and the integrity of the individual, unless there is an overriding public interest in disclosure."* EU public officials would then need to ensure that they conducted a case-by-case balancing of the privacy interests against the right of access to documents. They should be required to take into consideration that public office holders, civil servants, interest representatives and other persons in relation with their professional activities are subject to the principle of maximum disclosure.
10. Member State veto	*A Member State may request the institution not to disclose a document originating from that Member State without its*	*Where an application concerns a document originating from a Member State, other than documents transmitted in the framework of procedures leading to a legislative act*	*Where an application concerns a document originating from a Member State, other than documents transmitted in the framework of procedures leading to*	Access Info Europe is against the concept of a Member State veto. When a document is held by and requested from an EU body, that body should take the final decision on whether or not the

	prior agreement.	*or a non-legislative act of general application, the authorities of that Member State shall be consulted. The institution holding the document shall disclose it unless the Member State gives reasons for withholding it, based on the exceptions referred to in Article 4 or on specific provisions in its own legislation preventing disclosure of the document concerned. The institution shall appreciate the adequacy of reasons given by the Member State insofar as they are based on exceptions laid down in this Regulation.*	*a legislative act or a delegated or implementing act of general application, the authorities of that Member State shall be consulted where there is any doubt as to whether the document is covered by one of the exceptions. The institution holding the document shall disclose it unless the Member State gives reasons for withholding it, based on the exceptions referred to in Article 4 and take a decision on the basis of its own judgement as to whether the exceptions cover the document concerned.*	document should be released to the public. There are two main reasons for this: 1. The EU body should carry the legal responsibility for the decision which the requester has the right to appeal, either to the Ombudsman or the European Court of Justice. 2. The exceptions in Member States' national access to information laws do not all meet the standards of Regulation 1049 nor of the Council of Europe Convention on Access to Official Documents. Indeed, four member states do not currently have access to information laws in force (Cyprus, Luxembourg, Malta, Spain – representing 50 million people or about 1 in 7 Europeans) and at least two others have laws which fall seriously below EU standards (Austria has a very weak provision, and Italy requires requesters to justify why information is being sought). In addition, even in the countries with more developed regimes, there are sometimes exceptions which are out of sync with international standards (e.g. the police force is not a public body under the Irish FOIA). It is therefore essential that the only exceptions which can be invoked are those under Regulation 1049 and the public officials of the Union should be responsible for evaluating those exceptions and taking a decision on them.

				» **Recommendation**: Adopt the Parliament's proposed text or leave the Regulation as it is currently worded.
11. Time limits	In the original Regulation 1049 the time limits for answering initial requests are: 15 days, with the possibility to extend it another 15 days. For confirmatory applications: 15 days, with the possibility to extend it another 15 working days	The Commission is proposing that for or answering initial requests the time limit should be 15 days, with the possibility to extend it another 15. For confirmatory applications the proposal is 30 days, with the possibility to extend it another 15 working days.	*Retain original language*	Access to information is a fundamental human right and therefore it should be possible to exercise that right with minimum delays. As the European Court of Human Rights has stressed "news [and hence information] is a perishable commodity." The change proposed by the Commission is to extend the period for considering confirmatory applications to 30 working days. Access Info Europe sees no reason for this as the usual justification for an extension is finding the documents requested. At the confirmatory stage the only issue is whether or not the exception applies, and it should be entirely possible to reach a decision on this in 15 working days in the vast majority of cases and in a total of 30 working days in exceptional cases. In addition, the Danish Presidency has recommended extending the time limit for answering initial requests to from 15 to 30 working days, in the event that there is a need to consult with a third party. Access Info Europe believes that on the rare occasion when third parties will have to be consulted, there should be an extension of 5 more working days, making it 20 instead of 15. » **Recommendation**: In line with the

				Parliament's recommendation, retain the original language. » Add 5 working days for processing initial applications in the event that consultation with third parties is necessary.
12. Register of documents	*1. To make citizens' rights under this Regulation effective, each institution shall provide public access to a register of documents. Access to the register should be provided in electronic* *form. References to documents shall be recorded in the register without delay.* *2. For each document the register shall contain a reference number (including, where applicable, the interinstitutional* *reference), the subject matter and/or a short description of the* *content of the document and the date on which it was received or drawn up and recorded in the register. References shall be made in a manner*	The Commission has not proposed any changes to this provision.	The Parliament is proposing to replace the requirement that the registers be operational by 2002 with the following: *The institutions shall immediately take the measures necessary to establish a common interface for the institutional registers in order to ensure coordination between the registers.*	The proposal from the Parliament to have a central portal is welcome and would facilitate access to the websites and registers of each institution. Access Info also notes that there is too little information currently published in the registers and that these do not substitute for the open data portal which the EU is currently building to facilitate access to databases. We would therefore like to see stronger sanctions for failures to publish documents in the register. » **Recommendation**: Support the Parliament's proposal for a single interface for access to the registers.

	which does not undermine protection of the interests in Article 4. *3. The institutions shall immediately take the measures necessary to establish a register which shall be operational by* *3 June 2002.*			
13. Aarhus	This is not contemplated in the original Regulation 1049/2001	The Commission proposes to add an exception: *"The institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards: the environment, such as breeding sites of rare species."* Furthermore, the Commission has specified that *"an overriding public interest shall be deemed to exist where the information requested relates to emissions into the environment"*	*The Parliament agrees with the Commission's insertion of this exception.* *The Parliament also considers that an overriding public interest shall be deemed to exist where the documents relate to "the right to live in a healthy environment, including emissions into the environment"* Furthermore, the Parliament proposes to add the following article: *"Documents the disclosure of which would pose a risk to environmental protection, such as the breeding sites of rare species, shall only be disclosed in conformity with Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application 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."*	Access Info Europe notes that *Regulation (EC) No 1367/2006 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 (the* "Aarhus Regulation") refers to Regulation 1049/2001 for the mechanisms for accessing environmental information. In the majority of cases, access should be granted to the environmental information defined in the Aarhus Regulation, with the limited exception of protection of the environment, such as the breeding sites of rare species. **» Recommendation**: It is important that Regulation 1049 be amended to make clear that when a request for access to documents submitted under Regulation 1049 includes documents which contain information identified by Regulation (EC) No 1367/2006 as environmental information, there is a particularly strong presumption that the information will be disclosed unless

				the narrow exception of environmental protection applies. It is also important that the exceptions in Regulation 1049 be amended to ensure that a public interest always be deemed to exist when the information relates to emissions into the environment.
14. Copyright	*This Regulation shall be without prejudice to any existing rules on copyright which may limit a third party's right to reproduce or exploit released documents.*	*This Regulation shall be without prejudice to any existing rules on copyright which may limit a third party's right* ***to obtain copies of documents*** *or to reproduce or exploit released documents.* [emphasis added]	*Retain original language*	The expanded wording proposed by the Commission is unnecessary because Article 4.2 already contains an exception to protect the intellectual property of natural or legal persons. Access Info Europe also notes the vast majority of material held by the EU will have been created by it or Member States and hence access and use (re-use) should not be limited by copyright considerations. To the extent that material originates from other sources and is subject to copyright, this should not affect the right of the requester to obtain access to it for purposes of knowing what the information contains. It may however limit the right to further reproduce or exploit the material, depending on the copyright licence. There will only be very limited cases when it is not possible to release the material to the requester (an original copy of a film on DVD for example which happens to be held by an EU body). **» Recommendation**: Retain the original language.

15. Classification of documents	*1. Sensitive documents are documents originating from the institutions or the agencies established by them, from Member States, third countries or International Organisations, classified as 'TRÈS SECRET/TOP SECRET', 'SECRET' or 'CONFIDENTIEL' in accordance with the rules of the institution concerned, which protect essential interests of the European Union or of one or more of its Member States in the areas covered by Article 4(1)(a), notably public security, defence and military matters.* *2. Applications for access to sensitive documents under the procedures laid down in Articles 7 and 8 shall be handled only by those persons who have a right to acquaint themselves with those documents. These persons shall also, without prejudice to Article 11(2), assess which references to sensitive documents could be made in the*	The Commission has not proposed any changes to this provision.	1. When grounds of public policy under Article 4(1) exist, and without prejudice to parliamentary scrutiny at Union and national level, an institution, body, office or agency shall classify a document where its disclosure would undermine the protection of the essential interests of the Union or of one or more of the Member States, notably in public security, defence and military matters. A document may be partially or totally classified. Documents shall be classified as follows: (a) 'EU TOP SECRET': this classification shall be applied only to information and material the unauthorised disclosure of which could cause exceptionally grave harm to the essential interests of the Union or of one or more of the Member States; (b) 'EU SECRET': this classification shall be applied only to information and material the unauthorised disclosure of which could seriously harm the essential interests of the Union or of one or more of the Member States; (c) 'EU CONFIDENTIAL': this classification shall be applied to information and material the unauthorised disclosure of which could harm the essential interests of	The Commission has not modified the original provision in Regulation 1049/2001; only the Parliament has proposed changes. The Parliament's changes reflect the classification rules that were recently passed with minimal public debate and coverage of the issue and which apply to all Member States. These levels of classification are however acceptable as they are in line NATO standards as adopted by the majority of Member States. The classification of documents should be revised every five years in order to ascertain whether or not the classification still applies. Measures should be in place to guard against the over classification of documents. Regardless of whether or not a document is classified, citizens should be able to request access and the classification should be reviewed on a case-by-case basis. Finally, while it is certainly true that the European Parliament should have access to classified documents arising from international agreements, Regulation 1049/2001 is not the place to be defining the European Parliament's access to information rights. » **Recommendation**: Ensure that whenever documents are requested, an

	public register. *3. Sensitive documents shall be recorded in the register or released only with the consent of the originator.* *4. An institution which decides to refuse access to a sensitive document shall give the reasons for its decision in a manner which does not harm the interests protected in Article 4.* *5. Member States shall take appropriate measures to ensure that when handling applications for sensitive documents theprinciples in this Article and Article 4 are respected.* *6. The rules of the institutions concerning sensitive documents shall be made public.* *7. The Commission and the Council shall inform*		the Union or of one or more of the Member States; (d) 'EU RESTRICTED': this classification shall be applied to information and material the unauthorised disclosure of which could be disadvantageous to the interests of the Union or of one or more of the Member States. 2. Documents shall be classified only when necessary. If possible, originators shall specify on classified documents a date or period by which or by the end of which the contents may be downgraded or declassified. Otherwise, they shall review the documents at least every five years, in order to ensure that the original classification remains necessary. The classification shall be clearly and correctly indicated, and shall be maintained only for as long as the information requires protection. The responsibility for classifying documents and for any subsequent downgrading or declassification rests with the institution, body, office or agency which originated or which received the classified document from a third party or from another institution, body, office or agency. 3. Without prejudice to the right of access by other Union institutions, bodies, offices or agencies, classified	assessment will be made on a case-by-case basis irrespective of whether or not the document is classified, to determine whether exceptions apply.

	the European Parliament regarding sensitive documents in accordance with arrangements agreed between the institutions.		documents shall be released to third parties with the consent of the originator. When more than one institution, body, office or agency is involved in the processing of a classified document, the same classification shall be granted and mediation shall be initiated if they have a different appreciation of the protection to be granted. Documents relating to legislative procedures shall not be classified; implementing measures shall be classified before their adoption insofar as the classification is necessary and aimed at preventing an adverse effect on the measure itself. International agreements dealing with the sharing of confidential information concluded on behalf of the Union shall not give any right to a third country or international organisation to prevent the European Parliament from having access to that confidential information. 4. Applications for access to classified documents under the procedures laid down in Articles 7 and 8 shall be handled only by those persons who have a right to acquaint themselves with those documents. Those persons shall also assess which references to classified documents may be made in the public register. 5. Classified documents shall be	

			recorded in a register of the institution, body, office or agency, or released, with the consent of the originator. 6. An institution, body, office or agency which decides to refuse access to a classified document shall give the reasons for its decision in a manner which does not harm the interests protected by the exceptions laid down in Article 4(1). 7. Without prejudice to national parliamentary scrutiny, Member States shall take appropriate measures to ensure that, when handling applications for Union classified documents, the principles set out in this Regulation are respected. 8. The rules of the institutions, bodies, offices or agencies concerning classified documents shall be made public.	
New Provisions				
16. Information officers	Not mentioned	Not mentioned	*1. Each general administrative unit within each institution, body, office and agency shall appoint an Information Officer who shall be responsible for ensuring compliance with this Regulation and good administrative practice within that administrative unit.* *2. The Information Officer shall*	The experience of implementation of access to information laws in many countries shows that it is much more efficient and effective when each body nominates an information officer (or multiple officers in an information office for large bodies). Not only does this figure contribute to upholding the right of the public

			determine which information it is expedient to give the public concerning: (a) the implementation of this Regulation; (b) good practice; and shall ensure the dissemination of that information in an appropriate form and manner. *3. The Information Officer shall assess whether the services within his or her general administrative unit follow good practice.* *4. The Information Officer may redirect the person who requires the information to another general administrative unit if the information in question falls outside the remit of that unit and within the remit of another unit within the same institution, body, office or agency, provided that the other unit in question is in possession of such information.*	to information, but they often contribute to increased efficiency of information management within the public body. Consistent with recognition of the citizen's right to information and the practice of having data protection officers in each EU body, Access Info Europe welcomes and supports the Parliament's proposal. **» Recommendation**: In line with the Parliament's recommendation, nominate Information Officers. Such a position does not imply creation of an entirely new post, as many bodies already have someone responsible for handling access to documents requests and for those which do not, this could be undertaken, for example, by the body's data protection officers.
17. Organisational and budgetary transparency			*The institutions, bodies, offices and agencies shall inform citizens, in a fair and transparent way, about their organisational chart by indicating the remit of their internal units, the internal workflow and indicative deadlines of the procedures falling within their remit, and the services to which citizens may refer to obtain support, information or administrative redress. Documents relating to the European Union budget, its implementation and beneficiaries of Union funds and grants shall be public and accessible*	The Parliament has proposed that EU bodies proactively publish basic information about their functions and the use of public funds. Access Info Europe notes that the right of access to information has two dimensions: proactive and reactive publication of information, and welcomes the initial list of information to be published proactively proposed by the Parliament. We note that comparative standards on proactive publication underline in

			to citizens. *Such documents shall also be accessible via a specific website and database, and on a database dealing with financial transparency in the Union.*	particular the need to publish financial information and welcome the Parliament's proposal for a specific financial transparency database website. » **Recommendation**: Adopt the Parliament's proposed text.
18. Legislative documents	No provision	No proposal	*Documents relating to legislative programmes, preliminary civil society consultations, impact assessments and any other preparatory documents linked to a legislative procedure, as well as documents relating to the implementation of Union law and policies linked to a legislative procedure, shall be accessible on a user-friendly and coordinated interinstitutional site and published in a special electronic series of the Official Journal of the European Union.*	The Lisbon treaty requires that "The European Parliament and the Council shall ensure publication of the documents relating to the legislative procedures" and that this shall be included in a Regulation. The Parliament's proposal to make public the legislative process is therefore fully in line with the TFEU and is welcome, particularly the requirement that there be a user-friendly and coordinated inter-institutional website which Access Info Europe believes is essential to achieve a closer relationship between citizens and decision-makers as well as an open legislative process. » **Recommendation**: Adopt the Parliament's proposed text.
19. Preparatory Documents			*During the legislative procedure, each institution, body, office or agency associated in the decision-making process shall publish its preparatory documents and all related information, including legal opinions, in a special series of the*	The Parliament's proposal to publish preparatory documents relating to the legislative procedure is also consistent with the new Lisbon treaty requirement to ensure publication of the documents relating to the legislative

			Official Journal of the European Union as well on a common Internet site reproducing the lifecycle of the procedure concerned.	procedures. » **Recommendation**: Adopt the Parliament's proposed text.
20. Access for Research Purposes	This is not contemplated in the original Regulation 1049/2001	*Not mentioned*	An institution, body, office or agency may grant privileged access to documents covered by paragraphs (1) to (3) for the purpose of research. If privileged access is granted, the information shall only be released subject to appropriate restrictions regarding its use.	The Fundamental Right of access to information belongs to all persons, who do not have to give a reason for requesting information. The point here is that the vast majority of documents should be available under Regulation 1049/2011. It is only in exceptional circumstances, and when the publication of a document would seriously and not purely hypothetically undermine the protected interest, that access to documents should be refused. In such cases, access should be denied to all and there is no case for preferential treatment. » **Recommendation:** reject the Parliament's proposal.