

Amsterdam/Brussels/Madrid

8 December 2011

Re: Plenary vote on Thursday 15 December on access to documents rules

Dear MEP,

We are writing to ask you to take action to protect the transparency of the European Union on behalf of EU citizens on 15 December 2011 through your vote on the reform of the EU's access to documents rules (Regulation 1049/2001).

Your support is needed to secure and advance EU transparency in line with the public's right of access to documents set out in the Treaty on the Functioning of the EU (Article 15) and the Charter of Fundamental Rights (Article 42).

On Thursday, 15 December you will be asked to vote on the future of the rules. The LIBE Committee report is a response to the Commission's 2008 proposals for a recast which led to widespread concerns about a reduction of the level of openness of the EU.

The EU Ombudsman and many others have warned that the Commission's revisions would lead to fewer documents being disclosed to the public and hence to the EU becoming even more distant from its citizens.

In January of this year, 152 non-governmental organisations along with 137 investigative journalists, academics and campaigners from across Europe and beyond signed an open letter to MEPs (enclosed), urging the European Parliament to maintain and expand the public's right to access information held by the EU.

We are now urging you once again to support the amendments proposed in the report from the LIBE Committee which address many of the concerns voiced by civil society.

During discussions in the LIBE Committee, the EPP withheld support for the report based on concerns over three points:

- Amendment 30 rejects the Commission's proposal to narrow the definition of 'document' and broadens it to cover information held in electronic systems, including databases stored on "off site" servers. The EPP expressed the view that this would permit preparatory and confidential documents to be released and undermine civil servants' "space to think". This concern is based on a misunderstanding. The Regulation provides a wide definition of 'document' but also a wide range of exceptions in Article 4, which permit documents to be withheld to protect legitimate interests, such as commercial secrets or the space to think (Art. 4(3)). Narrowing the definition is thus unnecessary and may lead to requests being refused because the information is not contained in a 'document', regardless of any harm to legitimate interests.
- Amendments 29, 35, 41 and 44 seek to enhance the openness of legislative procedures in line with Article 1 TEU ("decisions are taken as openly as possible and as closely as possible to the citizen"), Article 15(3) TFEU, last paragraph and the Court of Justice of the EU's case law. The EPP cautioned that increased access to preparatory legislative

documents will significantly impair decision-making. We believe transparency of the legislative process is an essential democratic requirement, which will increase public understanding of and confidence in EU decision-making without undermining its effectiveness.

- The EPP expressed its support for protection of privacy, data protection, commercial secrets and sensitive information related to court proceedings. These interests are currently effectively protected by Article 4 of the Regulation and this will not change under the report adopted by LIBE.

By supporting the amendments proposed in the LIBE report you will:

- ✓ **Bring the EU's access to documents rules into line with the Lisbon Treaty:** a range of amendments ensures alignment with the Lisbon treaty. These include 26, 28 and 29, which will make the Regulation applicable not only to Institutions but also to bodies, offices and agencies, as well as the Court of Justice of the EU, the European Central Bank and the European Investment Bank insofar as they perform administrative tasks. This is required by Article 15(3) TFEU.
- ✓ **Uphold the Pro-Transparency Decisions of the European Court of Justice:** Amendment 35 aligns the Regulation with the *Turco* ruling in which the ECJ held that opinions of the Council's legal service issued in the course of legislative procedures should in principle be disclosed.
- ✓ **Reject a member state transparency veto based on weak access to information laws:** Amendment 43 implements the ruling in Case C-64/05 P, *Sweden v Commission*, where the ECJ held that Member States do not have a general and unconditional right of veto with regards to access to documents originating from them. It removes the Commission proposal to allow Member States to base a veto on their own national legislation, which in many cases is weaker than the EU's access to documents rules.
- ✓ **Ensure a rapid appeal process for members of the public denied information:** Amendment 50 ensures that confirmatory applications will still need to be responded to within 15, rather than 30 working days (although this can still be extended in exceptional cases by 15 days).
- ✓ **Establish Information Officers to improve efficiency in responding to requests from the public:** Amendment 62 institutes the appointment of an information officer within each administrative unit, responsible to ensure correct application of the transparency rules.
- ✓ **Preserve existing legitimate exceptions** which protect privacy, business secrets, and genuinely sensitive information in the context of competition and staff cases whilst ensuring, through amendment 38, that information which should be made public is automatically released.

Thank you for your consideration,

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