

José Manuel Barroso
President of the European Commission

Brussels,
 BARROSO (2012) 371932
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Dear Mr López Aguilar,

Thank you for your letter of 27 March concerning the proposed amendments to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

With regard to the scope of the recast exercise, I would recall that the Commission submitted its proposal in the form of a recast in order to obtain a single legal text and a readable and comprehensive transparency regulation. In so doing, the Commission acted in accordance with the Parliament's request that the Commission use the recast as a general technique to modify existing legislation¹. A corollary of this is that, in accordance with the inter-institutional agreement on recasting, the legislator must in principle limit its work to the provisions presented for revision in the Commission's proposal.²

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Mr Juan Fernando LÓPEZ AGUILAR
 Chairman
 Committee on Civil Liberties, Justice and Home Affairs
 European Parliament
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¹ See, inter alia, Resolution of 16 May 2006, on a strategy for the simplification of the regulatory environment (P6 TA(2006)0205), para. 12. "Considers codification and recasting to be the primary means of simplifying the *acquis communautaire* and urges that they be used more -widely; believes that recasting has been used only to a limited extent and that this is due to both lack of interest on the part of the Commission and a failure to gear the European Parliament's Rules of Procedure closely enough to the Inter institutional Agreement on recasting."

² Pursuant to Paragraph 8, provisions unmodified by the Commission's proposal can only be amended if this appears necessary and the procedures provided for in the Treaty legal basis are respected. This includes the Commission's right of initiative. The position of the legislator is therefore the same as it would have been had the Commission presented a simple modification proposal. As regards provisions unchanged in the Commission's proposal, the Commission has not exercised its right of initiative and therefore amendments proposed with regard to these provisions exceed the scope of this particular exercise.

This was the reason for the Commission's position on certain of the amendments adopted by Parliament at first reading.

Following the Commission's initial proposal, the entry into force of the Lisbon Treaty has been taken fully into account, first by the identification of the proposal in question in the Commission communication on the impact of the Treaty on pending proposals³ and subsequently via a complementary proposal to align the current Regulation to the Lisbon Treaty⁴.

Many of the specific points raised in your letter, for instance on special treatment for specific fields, the availability of legal opinions in the legislative process and the alignment with the Aarhus Convention, are the subject of ongoing discussions between the institutions. The Commission has made its position and legal analysis on these points clear in the course of the negotiation. We will continue to work in a constructive way with the aim to ensure that the resulting Regulation strikes a fair balance between the right of access to documents and the limits necessary to protect public or private interests which are also recognised by EU law.

I note with satisfaction the constructive role of the LIBE Committee and the Rapporteur in the ongoing negotiations between the institutions. I can assure you that the Commission is committed to reaching an agreement in the near future provided that the essential elements of its proposal are upheld. I hope that, thanks to the good cooperation with the Danish Presidency and European Parliament, this file can now be brought to a successful conclusion.

Yours sincerely,

A handwritten signature in dark ink, consisting of a vertical line followed by a long, sweeping horizontal curve that ends in a small hook.

José Manuel BARROSO

³ Communication of 2 December 2009 "Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures" - COM(2009) 665 final

⁴ Proposal for a Regulation amending Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents - COM(2011) 137 final