

**EUROPEAN COMMISSION
COUNCIL OF THE EUROPEAN UNION
EUROPEAN PARLIAMENT**



**DRAFT MINUTES OF THE MEETING OF THE
INTERINSTITUTIONAL COMMITTEE
PROVIDED FOR IN ARTICLE 15 OF REGULATION (EC) No 1049/2001
ON PUBLIC ACCESS TO DOCUMENTS**

**HELD ON TUESDAY, 2 OCTOBER 2007 AT 16.00
IN BRUSSELS**

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PARTICIPANTS

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1. ADOPTION OF AGENDA

The draft agenda was adopted with the addition of the following points under "Other Business":

- Letter from Mr. Cavada concerning access of Parliament to sensitive information in the field of Justice and Home Affairs.
- Next meeting of the Interinstitutional Committee.

Mr LEPOIVRE apologised for the absence of Mr LOBO ANTUNES, Secretary of State for European Affairs (Portugal). He would represent the Council in the meeting.

2. EXCHANGE OF VIEWS ON THE RESULTS OF PUBLIC CONSULTATION ON GREEN PAPER COM(2007)185 FINAL

Ms WALLIS invited the Commission to give a general introduction with regard to the outcome of the public consultation on the Green Paper.

Ms WALLSTRÖM noted that the Commission was very satisfied with the response to the Green Paper. Eighty-one contributions had been received, evenly balanced between public authorities, the corporate world, non-governmental organisations and individual citizens. The picture that emerged looked as follows for the different issues:

- Registers and websites. The message is clear: registers and websites should be easier to access and more harmonised; the scope of the Commission's registers should be extended. Citizens would welcome a more proactive disclosure policy.
- Regulation (EC) N° 1049/2001 and the Århus Convention on access to environmental information. The alignment of the Regulation with the provisions of the Convention was widely supported by public bodies and individual citizens. Environmental NGOs have expressed concerns that such alignment might lower the transparency standards for environmental matters. On the other hand, the chemical and bio-technical industries feared a spill- over from the Århus provisions to the general rules on public access.
- Balancing interests. Opinions were divided on the question of the right balance between public access and the protection of personal data. The current practice of blanking out names and other personal data in documents to be disclosed was criticised by the Ombudsman and even the European Data Protection Supervisor. Many respondents, in particular journalists, called for greater openness where persons acted in a public capacity. The chemical and bio-technology industries on the other hand, pointed out that employees had been harassed after their identity was revealed. There was a similar divide on the protection of commercial interests. Public authorities considered that the current rules struck the right balance while journalists, NGOs and a clear majority of citizens claimed that more weight should be given to the interest in disclosure. Industry called for better protection of business information, as could be expected.

- Excessive requests. This question led to diverging reactions. The private sector was unanimously in favour of the Institutions derogating from the normal rules when dealing with excessive requests. A slight majority of Member States supported specific measures for such requests, based on objective criteria. The Ombudsman, an important minority of Member States and NGOs were opposed to having specific rules on excessive requests.
- Definition of document. The general feeling was that the current wide definition should be maintained. A clarification with regard to database as suggested in the Green Paper would be welcome.
- Time frames for the application of exceptions. There was no support for the idea of defining events before which documents would not be accessible. On the other hand, NGOs and a majority of Member States would welcome the systematic disclosure of documents after a specific event and well before the 30 year limit for opening the archives.
- Many respondents called for an extension of the scope of the Regulation to all EU institutions, bodies and agencies. The Ombudsman and some Member States have raised the question of access to Member States' documents which under the current rules was subject to the consent of the Member State who transmitted them to the institutions (this question is currently pending before the Court of Justice).

Ms WALLSTRÖM concluded that the public consultation had provided valuable feedback on how the concrete application of the Regulation was perceived by the different categories of users. The Commission would shortly issue a factual report on the outcome of the consultation; based on that report and the pending judgments from the Court, in negotiation with Parliament, Council, and also with the European Data Protection Supervisor, the Commission would draft a proposal for a revised Regulation. The proposal will be presented probably late January, or early February.

Mr LEPOIVRE thanked the Commissioner for the interesting summary and indicated that he was looking forward to receive the factual report. He pointed out that while the Interinstitutional Committee was indeed mandated to discuss future developments on public access to documents, the Committee should refrain from anticipating future negotiations between the Institutions with regard to a proposal for a new Regulation. Moreover, the Council was not informed of Member States' positions as regards a review of Regulation (EC) N° 1049/2001 at this stage. For these reasons, the Council's comments and contributions to the discussions on item 2 of the agenda would primarily be based upon the experience acquired with the implementation of Regulation 1049/2001.

It should be recalled in this context that the practical experience of the institutions as regards the implementation of the Regulation inevitably varies according to the specific role and activities of each institution. Thus, roughly fifty percent of the requests for access to Council documents concern working documents established within the framework of the Council's role as legislator whereas the other half of

the requests concern the activities of the Council and its General Secretariat within the areas of the "second" and the "third pillar".

Yet, while the examination of in particular "second" and "third pillar related" documents might be time-consuming because of the complex and sensitive character of the issues dealt with in such documents, the Council did not have to examine that many requests for access to "voluminous files" as the Commission, which receives a very considerable amount of requests for documents relating to its work of inspection, investigation and auditing. This said, the Council had, in a number of cases been obliged to strike the balance between the right to access and the right to data protection, consider the need for protection of commercial interests or examine the relation between Regulation 1049/2001 and specific access rules (laid down in *inter alia* the Staff Regulation or the Financial Regulation), which may occasionally limit or even exclude the right of access to documents held by the EU institutions.

The fact that the Council had one single Register containing references to Council documents entered in it via an automatic archiving system (Workflow) eased the identification of the requested documents and facilitated rapid response to requests for access.

Mr. LEPOIVRE explained that as far as the concept of a document was concerned, as referred to in the Green Paper, the Council distinguishes systematically between documents issued by Council members acting in that capacity and those from Member States as such, i.e. as third parties in relation to the Council. In the framework of their participation in the work of the Council and its committees and working parties, the representatives of Member States' governments are not persons or entities outside the institution, but are parts of it. Therefore, documents or parts of documents summarising the spoken interventions of the members of delegations in the Council or in one of its preparatory bodies, and written positions of a delegation presented in the context of the institution's deliberations, even in a separate document, are not third-party documents but Council documents.

Thanks to the experience acquired, the number of confirmatory requests received by the Council was decreasing (only 12 during the first nine months of 2007, as against 40 in 2006 and 51 in 2005). In conclusion, the Council and its Secretariat general were as a whole satisfied with the functioning of Regulation (EC) N° 1049/2001. The Council was open to examining any proposals which would improve the functioning of the access regime, including means of improving public access which could possibly be made without changing the Regulation, such as the proposal to consider a single Internet portal for the Registers of all three Institutions which had already been suggested at the previous meeting of the Interinstitutional Committee.

Ms WALLIS thanked the speakers for their contributions and reiterated that the purpose of the meeting was also to have a common method of work, of precedent when treating the applications for access received by the three Institutions. This was the reason why in the agenda certain elements had been pointed out to examine the development of a more common practice in the future.

a) Public access and data protection

Ms. WALLIS underlined that divergent approaches existed on this issue and a common practice would be needed.

Ms WALLSTRÖM considered that the Institutions would be helped by the Court judgment in the *Bavarian Lager Company v Commission* case, expected shortly. The new revised regulation should take into consideration the ruling by the Court.

Mr LEPOIVRE pointed out the difficulties in reaching a common approach with 27 Members States.

b) Protection of commercial interests

Ms WALLIS advised that Parliament had had difficulties with the application of this exception, in particular in the cases of requests for access to documents concerning tender procedures. The exception in Article 4(2) did not properly cover cases in which the Institution takes the role of private agent in the financial market (buildings policy) when the public procurement directives do not apply.

Mr LEPOIVRE replied that this issue was not a major problem to judge from the practical experience of the Council.

c) Relation between the Regulation and specific access rules

Ms. WALLIS noted that experience in Parliament (mainly in requests for access to documents concerning recruitment procedures) showed that current specific rules on access do not cover all cases and persons having legitimate and privileged access rights referred, nevertheless, to Regulation (EC) N° 1049/2001, but access under this regulation had to be refused owing to the fact that public disclosure of the documents would undermine the applicant's own interests. It would be advisable to consider codifying rules granting special access that go beyond the public right of access.

Ms WALLSTRÖM advised that as far as the Commission was concerned, their experience in this field was mainly in Competition cases.

Mr. LEPOIVRE pointed out that while the Council had experienced some problems mainly in the context of the Staff Regulations and Tendering Procedures, this was not an issue of major concern for the Council.

d) Definition of Document

Ms. WALLIS mentioned the specific problem of databases as currently more and more information was gathered in databases and the Parliament was currently dealing with a complaint concerning access to information contained in a database. She considered appropriate the proposal made by the Commission in the Green Paper concerning the definition of a document extracted from a database

Ms WALLSTRÖM advised that the responses received in the public consultation praised a rather wide definition of document by opposition to the practice of limiting the access rights by means of a very restrictive definition of document. She considered it advisable that the Institutions exchanged information by way of concrete examples of this type of request in order to follow the same line.

e) Excessive requests

Ms WALLIS reiterated that the Codes of Good Administrative Behaviour include clauses concerning excessive requests which could be adapted to be taken up in the revised Regulation. A common definition for the three Institutions would be advisable. In addition, the idea of charging a fee could be considered in certain cases.

Ms WALLSTRÖM noted that the Commission sometimes received requests involving 30 to 50.000 pages but were not always considered as being excessive; in certain cases they could be handled in a practical way. The Commission would look at examples/experience in the Member States and third countries in order to find an appropriate solution with a view to the new proposal. In any event, it was always useful to enter into dialogue with the applicant.

Mr LEPOIVRE underlined that the Council did not receive as many voluminous requests as the Commission. He considered that it would be difficult to establish general criteria which might then be applied too frequently.

f) Improving transparency in co-decision procedures closed at first reading

Ms WALLIS raised this question, bearing in mind that this was an Interinstitutional meeting, and the issue had become an increasing matter of concern. There was a "Joint Declaration on practical arrangements for the Codecision Procedure" but concerns remained and improvement in the practical implementation was needed. When a codecision procedure was ended at first reading, the information available to the public was much less than in cases where the whole conciliation procedure was followed. It would be useful, even for the Institutions internally, to have more clarity in the documentation accompanying the process. A parliamentary Working Group was looking at the question as part of the Institution's own reform but the question involved the three Institutions and the ideas of the Council/Commission would be welcome.

Mr LEPOIVRE stated that the issue of public access to the decision-making procedure fell outside the scope of Regulation (EC) N° 1049/2001 and hence outside the mandate of the Interinstitutional Committee. He pointed out that the trialogues were usually conducted in an informal framework and it was extremely difficult to establish documents on everything while at the same time protecting the decision-making procedure. An essential element

was good reporting to the members of the Council and Parliament, in particular to the relevant parliamentary committee, which met in public.

Ms WALLSTRÖM also considered that the question was not at the core of the Regulation (EC) N° 1049/2001 framework. Only if a document existed was the Regulation applicable. The Institutions could agree on codifying process documents for the trialogues with a view to better information concerning the agreements reached; the public could thus request these documents.

Ms WALLIS concluded by asking the other Institutions to keep a watch on these processes and to reconsider it at some stage in the future.

g) Integration of Institution's registers (common internet portal)

Ms WALLIS reminded the Committee that the idea of a common Internet portal to present the information concerning access to documents in a more uniform and coherent way had been already discussed on previous occasions.

Ms WALLSTRÖM underlined that it was a technical issue which did not require an amendment of Regulation (EC) N° 1049/2001 but that adequate resources both budgetary and human were needed.

Ms WALLIS added that a complementary idea would be the publication of a handbook of best practices for use by the three Institutions.

Ms WALLSTRÖM and Mr LEPOIVRE agreed with the idea, provided the necessary human resources were available.

It was agreed that the technical working group should continue with the work of exploring the possibility of a common Internet portal.

3. OTHER BUSINESS

a) Letter from Mr Cavada (Chairman EP Committee on Civil Liberties, Justice and Home Affairs)

Ms WALLIS reiterated that the letter had been circulated to the other Institutions and concerned the access of Parliament to sensitive information in the context of a legislative procedure in the field of Justice and Home Affairs. Taking into account the new competences of the Parliament in this field in the context of the Reform Treaty, practical arrangements should be found in the future in order to allow the Parliament to properly exercise their rights.

Mr LEPOIVRE took the view that the question fell outside the scope of Regulation (EC) N° 1049/2001 which concerned access to documents by members of the public. As a consequence, it was also outside the mandate

of the Interinstitutional Committee. It would be for another forum with a different mandate to explore possible solutions.

b) **Date next meeting**

Ms WALLIS suggested that, taking into consideration the expected case law and the proposal from the Commission due at the beginning of 2008, a follow-up meeting could take place some time in February 2008.

Ms WALLSTRÖM said that she would discuss it with the State Secretary of Slovenia (next presidency of the Council) whom she was seeing shortly.

Mr LEPOIVRE reiterated that the agenda for the next meeting should contain items within the mandate of the Interinstitutional Committee, which should not be confused with the scope of the Interinstitutional co-decision procedure.

It was agreed that the next meeting would take place in February 2008 at a date to be determined.

Ms WALLIS concluded by thanking everybody and announcing that draft minutes of the meeting would be circulated for approval by written procedure.

The meeting closed at 17.30.