

EUROPEAN PARLIAMENT COUNCIL OF THE EUROPEAN UNION EUROPEAN COMMISSION



**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, 23 SEPTEMBER 2003 AT 16.30
IN STRASBOURG**

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 - a) request by the Committee of the Regions to take part in the work of the Interinstitutional Committee
 - b) frequency of meetings of the Interinstitutional Committee

PARTICIPANTS

European Parliament:

Ms Charlotte CEDERSCHIÖLD, Vice-President
Mr Michael CASHMAN, Rapporteur

Mr Harald RØMER, Deputy Secretary-General

_____, _____, _____
_____ (Directorate-General for the Presidency)
_____ (Adviser to the EPP group)

Council of the European Union:

Mr Roberto ANTONIONE, President of the Council

Mr Hans BRUNMAYR, Director-General

_____, _____ (Secretariat-General)

_____, _____, _____
(Italian Permanent Representation)
_____ (Irish Permanent Representation)

European Commission:

Ms Loyola de PALACIO, Vice-President

Mr Enzo MOAVERO MILANESI, Deputy Secretary-General

Mr Margaritis SCHINAS (Ms de Palacio's Cabinet)

_____, _____ (Secretariat-General)

1. ADOPTION OF AGENDA

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

- request by the Committee of the Regions to participate in the work of the Interinstitutional Committee;
- frequency of meetings of the Interinstitutional Committee.

2. APPROVAL OF THE MINUTES OF THE MEETING OF 9 JULY 2002

The draft minutes were adopted unchanged.

3. RESULTS OF THE EXAMINATION OF THE CONFIDENTIALITY CLAUSES

Ms de PALACIO noted that the Commission's departments had drawn up an inventory of the provisions in current Community law relating to the conditions of access to documents, files or information. These confidentiality clauses had been checked for conformity with the provisions of Regulation No 1049/2001. No incompatibility with the Regulation was found. The inventory of confidentiality clauses and the Commission's conclusions had been communicated to Parliament and the Council.

Ms CEDERSCHIÖLD drew attention to the length of the list, which would be carefully studied by Parliament's departments.

Mr ANTONIONE endorsed the Commission's finding and considered that there was no apparent need to make changes in the legislation.

Mr CASHMAN observed that it was a very detailed analysis; in his view this exercise showed that the three institutions should draw up a set of common rules on the subject.

Ms de PALACIO found this idea interesting and said that the Commission would consider Mr Cashman's suggestion.

4. INTERINSTITUTIONAL COOPERATION ON ARCHIVES

Mr ANTONIONE presented the Council's proposals, which were intended to strengthen cooperation between the institutions in the field of archiving and document management by various measures including:

- formalising and strengthening the informal group on interinstitutional cooperation on archives;
- gradually harmonising filing systems and creating links between the files held by the different institutions;
- organising joint training courses for the staff assigned to the archive and documentation services.

Ms CEDERSCHIÖLD welcomed this initiative and confirmed Parliament's readiness to cooperate.

Ms de PALACIO considered these proposals very interesting and called on the departments of the three institutions, represented in the "archives" interinstitutional group, to study the measures necessary for their implementation.

5. EVALUATION OF THE PUBLIC HEARING OF 12 JUNE 2003 AT THE EUROPEAN PARLIAMENT

Ms CEDERSCHIÖLD noted that this hearing had produced an initial, very productive, public debate between the three institutions and representatives of certain civil society organisations on the practical application of Regulation No 1049/2001. She drew two main conclusions from it:

- that players in civil society wished to have access to the opinions of the institutions' legal services; she referred to the Ombudsman's position distinguishing between opinions relating to litigation, which were confidential, from those which were part of the legislative process;
- calls from civil society and Parliament for greater transparency in the legislative process by means of greater interinstitutional cooperation.

Mr ANTONIONE observed that the results of this hearing could be found in Mr Cashman's report, which would be adopted in the course of that plenary session. He said that the Council's departments had communicated factual observations on the draft.

Ms de PALACIO noted that the number of requests for access sent to the Commission had doubled between 2001 and 2002 and that these requests were becoming increasingly complex and voluminous. Against this background, she considered that a positive response rate of 70% testified to the Commission's attitude of transparency. She also pointed out that it was mainly professionals (lawyers, lobbyists, etc.) who used the Regulation. The evaluation that the Commission was then preparing would provide a more in-depth analysis of the questions arising from the implementation of the regulation.

Ms de PALACIO also regretted that the interinstitutional committee had not had the opportunity to examine the institutions' annual reports before the public hearing; this would have cleared up a number of misunderstandings. She hoped that, in future, the institutions would confer before a public hearing was held. On the subject of the Commission's annual report, she noted that:

- the statistics do not include requests for access to documents which are already in the public domain, nor the many requests for information;
- the figure of 38% for multiple or non-specified exceptions refers, in almost all cases, to the refusal of access based on several exceptions provided for in the Regulation; in no case does this relate to refusals not based on the Regulation; in a tiny number of cases, the motive for the initial refusal had not been specified, but this anomaly was subsequently corrected.

Ms de PALACIO also said that the Commission had taken note of the criticisms and suggestions set out in Mr Cashman's draft report.

Ms CEDERSCHIÖLD noted that significant progress had been made on transparency, but stressed that it was important to continue listening to the electorate's views, especially in Sweden, where public opinion was very sensitive to these questions. She welcomed the readiness to cooperate demonstrated by the institutions, particularly in perfecting common search systems. She also said that Parliament understood the problems referred to by the Commission. Recalling the joint brochure published about a year ago, she suggested thinking about producing a new joint publication illustrating the progress achieved by the institutions on access to documents.

Mr CASHMAN welcomed the efforts of the institutions on transparency and praised the work of the staff assigned to this task. He noted that there had been considerable progress and considered that this should be made known. The criticisms expressed in his draft were constructive and should be understood as recommendations, particularly as regards:

- the single register, giving the public greater ease of access;
- the obligation to examine the accessibility of documents on a case-by-case basis, any exclusion by category being contrary to the Regulation; this relates in particular to legal opinions;
- the usefulness of an interinstitutional help-desk;
- the need to establish a common methodology for applying exceptions to the right of access;
- the common coding of documents, in particular legislative documents, to facilitate searches.

Lastly, he made it clear that he did not support the recommendation to harmonise national legislation.

The discussion was concluded by Ms de PALACIO highlighting as particularly interesting the idea of a common portal for access to the websites of the three institutions. Lastly, she noted the positive tone of Mr Cashman's report, the aim of which was to improve the functioning of the transparency arrangements put in place by Regulation No 1049/2001. Since this Regulation became applicable only about a year and a half ago, it was clear that the institutions were still in the initial phase of application of the Regulation and that more experience was needed.

6. PREPARATION OF THE EVALUATION REPORT TO BE PRESENTED BY THE COMMISSION IN JANUARY 2004

Ms de PALACIO thanked Parliament and the Council for their written contributions to the evaluation report that the Commission would be presenting in January 2004, in accordance with the provisions of the Regulation. She called on the representatives of these two institutions to inform her of any additional observation that they might consider relevant.

Mr ANTONIONE noted the main points arising from the Council's annual report:

- progress made: the practice of partial access, the restrictive application of the notion of "document originating from a Member State" and the growing number of directly accessible documents;
- the essential restrictions on the right of access: these are intended, notably, to protect the effectiveness of the decision-making process and the independence of the legal service.

Generally speaking, the Minister was of the opinion that the Council was applying Regulation No 1049/2001 correctly.

Ms CEDERSCHIÖLD noted that Mr Cashman's draft report contained a great deal of useful information for evaluating the practical application of the Regulation.

7. OTHER BUSINESS

a) Request by the Committee of the Regions to take part in the work of the Interinstitutional Committee

The President of the CoR had proposed to the President of the European Council that a representative of the Committee take part in the work of the Interinstitutional Committee.

Ms de PALACIO was of the opinion that both practical and legal reasons prevented such participation. There was nothing, however, to prevent the Committee being kept regularly informed, or being involved in informal cooperation between the departments.

Ms CEDERSCHIÖLD agreed, pointing out that the Regulation expressly provides for cooperation between the three institutions concerned.

Mr ANTONIONE took the same view. The Presidency, as recipient of the CoR's request, would answer along these lines.

b) Frequency of meetings of the Interinstitutional Committee

Ms de PALACIO noted the policy steering role of the interinstitutional committee, the purpose of which was not to deal with technical questions arising from the implementation in practice of Regulation No 1049/2001. Pointing to the difficulties encountered in scheduling meetings, she therefore proposed to set the frequency at one annual meeting. Extraordinary meetings would be convened if a matter required a decision at political level.

Ms CEDERSCHIÖLD noted that, in Parliament's view, the Interinstitutional Committee should ideally meet twice per Presidency. One meeting per Presidency would seem to her to be the minimum.

Mr ANTONIONE considered that the frequency of meetings should be dictated by the content of the agenda. He proposed that, in principle, two meetings a year should be planned, and this frequency could be adapted to the need for a meeting at political level.

Ms de PALACIO pointed out that the Interinstitutional Committee operated at two levels: that of the political representatives of the three institutions and that of the Secretaries-General or their deputies. She felt that the arrangement proposed by the Presidency was the most appropriate.

Ms CEDERSCHIÖLD also endorsed the Presidency's proposal.

The meeting closed at 17.30.