

## **REFLECTIONS ABOUT RIGHT OF PUBLIC ACCESS TO THE EU DOCUMENTS**

Basic of reflections about public access to UE institutional documents is the Intergovernmental Conference in Amsterdam on 1997<sup>1</sup>. One of 51 declarations adopted by this Conference was Declaration (no 41) on the provisions relating to transparency, access to documents and the fight against fraud. This document said that “the Conference considers that the European Parliament, the Council and the Commission, when they act in pursuance of the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community, should draw guidance from the provisions relating to transparency, access to documents and the fight against fraud in force within the framework of the Treaty establishing the European Community”[1, p. 140]. Signing on 2 October 1997 of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [2, p 325] and the entry into force of Article 255 of this Treaty is a step towards greater democratization, publicity and transparency within the European Union. According to Article 255 every EU citizen and natural and legal person residing or having its registered office in a Member State has a right to access of three Community institution – European Parliament, Council and Commission and owing to that every Union citizen, natural and legal person may participate more nearly in the decision-making process. Scope of subjective is more limited than scope of subjective eg. the Convention for the Protection of Human Rights and Fundamental Freedoms (signed at Rome on 4th November, 1950), where right to information has everyone [3, p. 23-25]. General principles governing this right of access to documents are determined by the Council and each institution (the European Parliament, the Council and the Commission) elaborate in its own rules of procedure specific provisions regarding access to its documents<sup>2</sup>. Access to UE documents has not absolutely character and may be limited by grounds of public or private interest.

Article 255 defines principle of openness, which is one of the main principles of Community law [4]. This principle was developed in the European Parliament and Council Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [5]. Regulation admits rules made under the jurisprudence of European

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<sup>1</sup>Before “Amsterdam” the Final Act of the Treaty on European Union, signed at the <sup>Maastricht</sup> on 1992, included a Declaration (no 17) asserting that ‘transparency of the decision-making process strengthens the democratic nature of the institutions and the public’s confidence in the administration’. The Conference accordingly recommends that “the Commission submit to the Council no later than 1993 a report on measures designed to improve public access to the information available to the institutions”. It become the principle that decisions should be taken as openly as possible. However this documents was a text without force of law.

<sup>2</sup>It should accent that right of access applies to documents related to common foreign and security policy and police and judicial cooperation in criminal matters (Article 28 and 41 of the EU Treaty).

Court of Justice (EJC) [6, p. 47; 7]. According to the preamble of this act openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system. Openness contributes to strengthening the principles of democracy and respect for fundamental rights. This act has a three aims: first – to define the principles, conditions and limits the right of access to European Parliament, Council and Commission documents provided for in Article 255 in such a way as to ensure the widest possible access to documents, second – to establish rules ensuring the easiest possible exercise of this right, and third – to promote good administrative practice on access to documents. Worth said that which documents are covered by this act. A “document” is defined in Article 3(a) as 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. Examples of that meant documents are Commission proposals, framework decisions, decisions and conventions, conventions signed between Member States, International agreements concluded by the Community. It provides that citizens may access from the presumption any type of document, subject to the conditions defined in the Regulation and the exceptions laid out therein. It applies to all of 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. However, there are no clear rules on access to documents of an administrative nature, informing citizens of the procedure to be followed by each institution, common rules for archiving documents or privileged access for persons with specific access rights [8]. Also a number of provisions of this Regulation gave rise to divergent interpretations as to the correct way to apply it, and led citizens to address the European Ombudsman and the European Court of Justice. The newest act – European Parliament resolution of 14 January 2009 on public access to European Parliament, Council and Commission documents (implementation of Regulation (EC) No 1049/2001) – 2007/2154(INI) said that accessing information relating to the EU-institutions still remains an obstacle-strewn path for ordinary citizens due to the lack of an effective citizen-oriented inter-institutional policy of transparency and communication. Union citizens should be able to track a given legislative or administrative procedure and access all the documents relating to it. UE-institutions should make clear to citizens in a fair and transparent way their organizational chart by indicating the remit of their internal units, the internal workflow and indicative deadlines of the dossier falling within their remit, to which services should citizens refer to obtain support, information or administrative redress.

The evolution at UE-acts allows giving main reflection. If the transparency becomes a truly fundamental principle of the European Union, it should ensure the accountability and legitimacy of a democratic political system in which all EU-citizens have real right to know: how their representatives act, once elected or appointed to public bodies or representing the Member States at European or international level (“principle of accountability”), how the decision-making process

works and how public money is allocated, spent and with which results (“principle of traceability of funds”).

### Literature

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5. Official Journal of the European Communities, 31.05.2001, No L 145.
6. K. Kowalik-Banczyk, Prawo dostępu do dokumentów instytucji wspólnotowych w Unii Europejskiej, Przegląd prawa europejskiego 1(15) 2004.
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8. European Parliament resolution (of 4 April 2006) with recommendations to the Commission on access to the institutions’ texts (2004/2125(INI), Official Journal of the European Union, 02.12.2006, No C 293 E/151.

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