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<Commission>{PETI}Committee on Petitions</Commission>

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<TitreType>OPINION</TitreType>

<CommissionResp>of the {PETI} Committee on Petitions</CommissionResp>

<CommissionInt>for the {LIBE} Committee on Citizens' Freedoms and Rights,
Justice and Home Affairs</CommissionInt>

<Titre>on the proposal for a Council regulation of the European Parliament and
of the Council regarding public access to European Parliament, Council and
Commission documents</Titre>

<DocRef>(COM (2000)30 C5-0057/2000 - 2000/0032 (COD))

Draftsman: <Depute>Astrid Thors </Depute>

<Procedure>PROCEDURE

The {PETI} Committee on Petitions appointed Astrid Thors draftsman at its meeting of 23 February 2000.DT(d MMMM yyyy)@DAT@

It considered the draft opinion at its meeting of 13 September 2000 and 10 October 2000.

At the last meeting it adopted the amendments below unanimously.

The following were present for the vote: Vitalino Gemelli, chairman, Roy Perry, 1st vice-chairman, Proinsias De Rossa, 2nd vice-chairman, Astrid Thors, draftsman ; Herbert Bösch, Felipe Camisón Asensio, Jonathan Evans, Janelly Fourtou, Laura González Álvarez, Ulpu Iivari, Margot Keßler, Jean Lambert, Véronique Mathieu, Hans-Peter Mayer, Eurig Wyn.

1. The role of the Committee on Petitions

In the European institutional framework the Committee on Petitions is the main intermediary between the institutions and European citizens. It is appropriate for the Committee on Petitions to deliver an opinion on the present proposal on public access to documents for two reasons.

(1) The right of petition, which is provided for in Article 174(1) of the European Parliament's Rules of Procedure, is open to any citizen of the European Union. It is an instrument of democratic control and administrative transparency which is necessary to the normal operation of any democratic parliament, thus constituting a fundamental right of European citizens.

(2) In accordance with Annex VI, Title XX, of the Rules of Procedure, the Committee on Petitions is also responsible for relations with the Ombudsman.

By virtue of Article 138e, paragraph 1, of the EC Treaty and Article 3(7) of the Statute of the Ombudsman, if the Ombudsman finds that there has been maladministration in the course of an inquiry, he sends a report to the European Parliament.

2. Ombudsman's inquiry

It was in this legal context that the European Ombudsman forwarded to Parliament, by letter of 15 December 1997, his special report further to the own-initiative inquiry on public access to documents (C4-0157/98).

Two factors prompted the Ombudsman to initiate this inquiry:

- 'the Ombudsman had received a number of complaints which appeared to suggest that the staff of Community institutions and bodies are not always adequately instructed as to how to deal with requests for documents and that documents are sometimes disclosed only after a considerable delay';

- 'part of the Ombudsman's mission is to enhance the transparency of the institutions and bodies and European citizens. The creation of institutions and bodies and European citizens meant to underline the commitment of the Union to democratic, accountable and transparent forms of administration'.

3. The Ombudsman's special report

In this report the Ombudsman notes that the rules governing public access to documents should constitute an instrument of good administration and contribute to the process of raising public awareness of the work of the Community institutions and bodies and to making these activities accessible. They should also give substance to the principle of transparency, to which the European Union has reaffirmed its commitment.

It is interesting to note in this context several opinions delivered by the European Parliament when it adopted the resolution on the Special Report by the European Ombudsman to the European Parliament following his own-initiative inquiry into public access to documents (C4-0157/98)(A4-0265/98); the fundamental importance of transparency for increased efficiency of the Community's administration; the danger represented by a unilateral Council decision on what constitutes 'legislation'; the establishment in all the Community institutions and bodies of public registers of all documents received or produced; the close link between a code of conduct on good administrative practice by Community institutions and increased transparency and improved public access to documents.

It is also necessary to underline how important it is that citizens of the European Union should be able to exercise their rights as citizens and that the Community institutions should provide them with information on questions relating to the areas of activity of the institutions and point people who mistakenly approach the wrong institution or body in the direction of the appropriate one.

4. Complaints to the Ombudsman

The question of transparency has been highlighted in a number of complaints to the Ombudsman. Here references are made to cases which deal with issues that are also dealt with in the draft regulation on access to documents.

Member State - Council relationship (complaint 1056/96/IJH) is relevant in relation to recital 12 and article 11 of the draft proposal on access to documents. It is interesting to note that the General Secretariat of the Council had previously rejected a request for a calendar of meetings. It was, however, settled that the Presidency is a function, or office, of the Council itself. In the context of the same complaint it was also clarified that access cannot be denied to documents of which an institution is a joint author under the rules of Council decision 93/731/EC on access to documents.

Definition of **administrative documents** (own-initiative inquiry OI/99/IJH), in which the ECB argues that the definition clearly does not include minutes of the Governing Council meetings on monetary policy issues. This argument illustrates the danger that the notion of the administrative document poses. (The corresponding article in the draft regulation on access to documents is article 3).

Repetitive applications (complaint 634/97/PD) do not, according to the Ombudsman, include applications by the same person for different documents, nor is the article to be interpreted in a way that brings all applications for a very large number of documents within its scope (article 5 in the draft regulation).

Protection in the interest of **confidentiality of its proceedings**; complaint 634/97/PD, in which the Council's reasoning as to why it is relevant to protect this interest in relation to the documents in question was found by the Ombudsman to be inadequate, and complaint 1057/96/IJH, in which the Ombudsman considers it incorrect to argue that the existence in documents of references to national positions can outweigh the interests of the applicants in all situations ("harm test").

Business secrets joint complaints 620/97 PD and 306/98 PD; after inspecting a report drawn up by a consultant, the Ombudsman concluded that the report in question, apart from one page with the consultant's evaluation of a state aid scheme, contained only factual elements submitted by authorities and a company. The Ombudsman suggested that, as the investigation for which the report was commissioned and the requests for confidentiality were withdrawn, the Commission should disclose the **factual information**.

Public interest

a) court proceedings (case 506/97 JMA)

The Commission had argued that protection of the public interest in the case of court proceedings gives it the power to refuse access to documents which relate to a pending legal case. This, according to the Court of First Instance, is wrong as it argues that a *distinction must be drawn between documents drafted by the Commission for the purpose of a particular court case and other documents which exist independently of such proceedings. Application of the exception based on the protection of the public interest can be justified only in respect of the first category of documents.*

b) public security (1057/25.11.96/IJH)

When making reference to the protection of public security as a reason to deny access to documents, further explanation should be given as to the nature of the information contained in the documents, in the view of the Ombudsman.

AMENDMENTS

The {PETI} Committee on Petitions calls on the {LIBE} Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

<SubAmend>

Text proposed by the Commission ¹		Amendments by Parliament
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(Amendment 1)

Recital 8

The principles laid down by this Regulation are to be without prejudice to the specific rules applicable to access to documents, in particular those directly concerning persons with a specific interest.

When taking decisions on the disclosure of a document the need to protect some of the interest protected by the exceptions must be weighted against the interest to promote transparency and the public discussion.

Justification

As has also become evident during the debate following the Council's decision on amending its rules on access to documents concerning military and non-military crisis management, it is necessary to establish a hierarchy between this draft regulation and other rules adopted by the three institutions. Such a hierarchy means that Recital 8 cannot be retained. On the other hand, it is necessary to introduce in the articles a so-called harm test, that is when a body is pondering access to documents, the interest to protect must be weighted against the interest for the public to have access to such documents.

(Amendment 2)

Recital 9

The public interest and certain individual interests should be protected by way of a system of exceptions. Examples of these interests should be given in each case so that the system may be as transparent as possible. The institutions should also be entitled to protect their internal documents, which express individual opinions or reflect free and frank discussions and provision of advice as part of internal consultations and deliberations. (delete)

Justification

Your rapporteur starts at a different point from the Commission on the question of what exemptions should be laid down. The list of exemptions should be exhaustive, and internal documents should not always be excluded from access. It is clear that institutions must have room for reflection, but that should not exclude them for ever. See amendment of Article 4.

(Amendment 3)
Recital 12

Even though it is neither the object nor the effect of this Regulation to amend existing national legislation on access to documents, it is nevertheless clear that, by virtue of the principle of loyalty which governs relations between the Community institutions and the Member States, Member States should take care not to hamper the proper application of this Regulation.

It is neither the object nor the effect of this Regulation to harmonise or amend existing national legislation on access to documents.

(Amendment 4)
Recital 13

In accordance with Article 255(3) of the EC Treaty, each institution lays down specific provisions regarding access to its documents in its rules of procedure. ***Failing such provisions, this Regulation cannot be applicable.***

In accordance with Article 255(3) of the EC Treaty, each institution lays down specific provisions regarding access to its documents in its rules of procedure. ***Such provisions may not have other restrictions than those foreseen in this regulation, and they may not be wider than those mentioned in article 4.***

This Regulation and the provisions giving effect to it will replace Council Decision 93/731/EC of 20 December 1993 on public access to Council documents², Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents³ and European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents⁴.

(delete)

Justification

The first part arises from the same reasons as the amendment to Recital 8. This regulation sets the outer limits of what can be excluded from access. For technical reasons is it also easier to have a separate recital on the entry into force of this regulation, as set out in recital 13a.

(Amendment 5)

Recital 13 a New

This Regulation and the provisions giving effect to it will replace Council Decision 93/731/EC of 20 December 1993 on public access to Council documents⁵, Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents⁶ and European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents⁷.

Justification

For reasons of clarity two different things are put in different recitals; see the amendment to Recital 13.

(Amendment 6)

Recital 13 b (new)

The rules on the register will apply at the latest to documents submitted to or issued by the institution when this regulation enters into force.

Justification

A very important part of rules on access to documents concerns the register. It is the public reference to which everybody can go and check what is happening, what is discussed. Therefore your draftsman has introduced in the articles and recitals references to the register. We know that it would be impossible to draw up registers afterwards, so therefore the idea is that the registers will be compulsory only when the regulation enters into force. In this way the registers will be compulsory only when the regulation enters into force. In this way the registers may be planned in a structured way. Today there are many technical ways of producing registers at the same time as the documents are made. It is natural that the institutions would use all the best data-processing techniques to develop registers.

(Amendment 7)

Article 1

The purpose of this Regulation is to promote openness and good practice on information management in the Institutions covered by this Regulation and to give natural and legal persons the opportunity to monitor and influence the functioning of the Institutions.

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to the widest possible access to the documents of the institutions within the meaning of this Regulation, without having to cite reasons for their interest, subject to the exceptions laid down in Article 4.

Any natural or legal person shall have the right to the widest possible access to **documents** of the institutions within the meaning of this Regulation, without having to cite reasons for their interest, subject to the relevant Rules in this Regulation.

A petitioner, a complainant, and any other person, natural or legal, whose right, interest or obligation in a matter is concerned (a party) shall also have the right of access to a document which is not accessible to the public, but may influence the consideration of his/ her case, as described in this Regulation and in implementing provisions adopted by the institutions.

Justification

Your draftsman proposes introducing a clear article on the purpose of the Regulation. It would also be wise to say that the same principles also apply to information, and not only to documents.

Amendments have also been made to extend the right of access to documents to all those who ask for them not only persons within the Union.

To make it clear that a party must have the right to access all documents that may influence decisions concerning him/her, according to specified rules and exemptions .

(Amendment 8)

Article 2

1. This Regulation shall apply to all documents held by the institutions, that is to say, documents drawn up by them or received from third parties and in their possession.

Access to documents from third parties shall be limited to those sent to the institution after the date on which this Regulation becomes applicable.

2. This Regulation shall not apply to documents already published or accessible to the public by other means.

It shall not apply where specific rules on access to documents exist.

1. This Regulation shall apply to all documents held by the institutions, that is to say, documents drawn up by them or received from third parties and in their possession.

(delete)
(See article 11)

2. This Regulation sets the limits for denying access to documents. Specified rules on access to documents adopted by the institutions may not contain other restrictions on access to official documents than those provided for in this regulation.

3. Rules on professional secrecy may not override the principles of this Regulation.

4. When the public disclosure of a document constitutes a specific form of dissemination as described in the data protection directives, it shall also be dealt with under this Regulation. Personal data may however be disclosed to a recipient who, pursuant to the provisions of the data protection directives, has a right to record and use such data.

Justification

The amendment of Article 2, point 2, establishes the hierarchy between this regulation and specified rules adopted on the basis of the regulation. Point 4 also defines the relationship to the protection of personal data.

(Amendment 9) *Article 3*

For the purposes of this Regulation:

(a) "document" shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording); **only**

For the purposes of this Regulation:

(a) "document" shall mean any content whatever its medium (written **or visual presentation** on paper or stored in electronic form or as a sound, visual or audiovisual

administrative documents shall be covered, namely documents concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility, excluding texts for internal use such as discussion documents, opinions of departments, and excluding informal messages;

(b) "institutions" shall mean the European Parliament, the Council and the Commission ;

(c) "European Parliament" shall mean Parliament bodies (and in particular the Bureau and the Conference of Presidents), Parliamentary Committees, the political groups and departments;

(d) "Council" shall mean the various configurations and bodies of the Council (and in particular the Permanent Representatives Committee and the working parties), the departments and the committees set up by the Treaty or by the legislator to assist the Council;

(e) "Commission" shall mean the Members of the Commission as a body, the individual Members and their private offices, the Directorates-General and departments, the representations and delegations, committees set up by the Commission and committees set up to help it exercise its executive powers;

A list of the committees referred to in points (d) and (e) of the first paragraph shall be drawn up as part of the rules giving effect to this Regulation, as provided for in Article 10.

recording) which is prepared on behalf of the Institution or given to a person acting on behalf of the Institution in connection with a matter within the competence or duties of the Institution and also when a document has been commissioned by the Institution, excluding informal messages which are not considered to be documents;

(b) "institutions" shall mean the European Parliament, the Council and the Commission ;

(c) "European Parliament" shall mean Parliament bodies (and in particular the Bureau and the Conference of Presidents), Parliamentary Committees, the political groups and departments, ***and anybody who has the authority to decide on behalf of the European Parliament***

(d) "Council" shall mean the various configurations and bodies of the Council (and in particular the Permanent Representatives Committee and the working parties), the departments and the committees set up by the Treaty or by the legislator to assist the Council, ***and anybody who has the authority to decide on behalf of the Council***

(e) "Commission" shall mean the Members of the Commission as a body, the individual Members and their private offices, the Directorates-General and departments, the representations and delegations, committees set up by the Commission and committees set up to help it exercise its executive powers, ***and anybody who has the authority to decide on behalf of the Commission***

A list of the committees referred to in points (d) and (e) of the first paragraph shall be drawn up as part of the rules giving effect to this Regulation, as provided for in Article 10, ***and be kept up to date.***

question.

As soon as a document arrives at an Institution, it should be registered and be accessible to the public if none of the exceptions is applicable.

Furthermore, to make it easier for citizens to exercise their rights arising from this Regulation, each institution shall provide access to the register of documents.

Justification

This amendment is one of the cornerstones of the opinion. It was a grave flaw in the draft that hardly any precise rules on the registers were proposed. The moment of entry into the registry defines the moment when a document can be accessed by the public. There need to be rules both for documents produced by the institution and held by the institution. Before that moment a document can be given to the public, at the discretion of those responsible. It should be given out as widely as possible.

(Amendment 11)
Article 4

The institutions **shall** refuse access to documents where disclosure could significantly undermine the protection of:

(a) the the publthe public interest

particular:

public security,
defence and international relations,
relations between and/or with the Member States or Community or non-Community institutions,
financial or economic interests,
monetary stability,
the stability of the Community's legal order,

The institutions **may** refuse **the public s** access to documents where disclosure could significantly undermine the protection of:

interest ~~and the ianpublthe~~ publicthe public interest wh

concerns:

public security,
vital interests relating to
defence and international relations,
(delete)
financial or economic interests **of the Community or Member States,**
monetary stability,
(delete)
the Institution s
interventions in court

*court proceedings,
inspections, investigations
and audits,*

*proceedings until the Court
has decided on the case,
prevention, investigation and
prosecution of criminal
activities,*

*infringement proceedings, (delete)
including the preparatory
stages thereof, (delete)
the effective functioning of
the institutions;*

(b) *privacy and the individual (b) and privacy, when it concerns data that
particular: must be protected according to Directive
95/46 on the protection of personal data,*

personnel files, (delete)

*information, opinions and (delete)
assessments given in
confidence with a view to*

*recruitments or (delete)
appointments,*

*an individual's personal details or
documents containing information such as
medical secrets which, if disclosed, might
constitute an infringement of privacy or
facilitate such an infringement;*

(c) *commercial and industrial secrecy or commercial and industrial secrecy or
the economic interests of a specific natural or legal person (c) the economic interests
of a specific natural or legal person and in particular: when it concerns:*

*business and commercial
secrets,*

*business and commercial
secrets, including
intellectual and industrial
property,*

*intellectual and industrial
property,*

(delete)

*industrial, financial, banking
and commercial information,
including information
relating to business relations*

*industrial, financial, banking
and commercial information,
including information
relating to business relations
or contracts,*

or contracts, (delete)
**information on costs and
tenders in connection with
award procedures;**

(d) confidentiality as requested by the confidentiality as required by the
third party having supplied the document legislation of the Mlegislation
or the information, or as required document emanates from that State.
legislation of the Member State.

When taking decisions on the disclosure of a document the need to protect the interests above must be weighed in the interest to promote transparency and public discussion.

Justification

Many changes are needed to this Article. Comparisons ought to be made with the existing Council decision. This article is in some ways more restrictive than the existing rules.

First, it would be very strange to have an obligation for the institutions to refuse access to documents ('shall' to be replaced by 'may').

Secondly, the grounds upon which access to documents may be denied are listed in an exhaustive manner.

Concerning the individual grounds for denying access:

- only vital interests relating to defence and international relations should be protected, that is information that would harm the operation of military forces and similar security interests. Vital interests in international relations also include those questions relating to sensitive information on the Community's relations with third countries. Questions regarding the Member States' relations cannot be regarded as needing special protection.

The stability of the Community's legal order is difficult to interpret, and therefore provisions relating to Court proceedings and to investigations of criminal activities are introduced instead.

In point b) the most reasonable thing seems to be to protect those questions where disclosure is restricted as a consequence of rules on data protection

In point d) an amendment is introduced so as to make the rule meaningful that documents held by the institutions are those that are covered by the regulations, and therefore a possibility for any third party to ask for confidentiality is not accepted.

The harm test is introduced as the last paragraph in this Article.

(Amendment 12)
Article 4a New

Requests for information

Members of the public shall be provided with the information they request. The information communicated shall be clear and understandable and made available in formats accessible to all citizens. The availability of alternative formats shall be publicised.

Each institution shall take the requisite measures to inform the public of the rights they enjoy as a result of this Regulation.

If a member of the public is addressing the wrong institution or body, he shall be advised where to turn to.

Justification

The aim of this amendment is to ensure that citizens and special groups of citizens such as the visually impaired are provided with relevant information in a relevant form. It also introduces a duty for the services to give information in a relevant form.

(Amendment 13)
Article 5

1. Further to a request for access to documents, the Institution shall give access to the documents in accordance with this regulation and the implementing provisions of the Institution.

1. All applications for access to a document shall be made in writing in a sufficiently precise manner to enable the institution to identify the document. The institution concerned may ask the applicant for further details regarding the application.

All applications for access to a document shall be made in a sufficiently precise manner to enable the institution to identify the document. The institution concerned may ask the applicant for further details regarding the application.

In the event of repetitive applications and/or applications relating to very large documents, the institution concerned shall confer with the applicant informally, with

If an oral request for information is too complicated or too comprehensive to be dealt with, the person concerned shall be advised to formulate the demand in

a view to finding a fair solution.

2. Within *one month* of registration of the application, the institution shall inform the applicant, in a written and reasoned reply, of the outcome of the application.

4. In exceptional cases, the one-month time-limit provided for in paragraph 2 may be extended by one month, provided that the applicant is notified in advance and that detailed reasons are given.

Failure to reply within the prescribed time-limit shall be treated as a negative response.

writing.

2. Within *two weeks* of registration of the application, the institution shall inform the applicant, in a written and reasoned reply, of the outcome of the application ***and, if accepted, transmit the documents in the same period.***

(delete)

Justification

Members of the public may request information either orally and in writing; if a request is very complicated, then it should be made in writing. The definition of repetitive is also most unfortunate, as has been seen in the cases before the Ombudsman.

(Amendment 14)

Article 6

1. Where the applicant submits a confirmatory application, the institution shall reply to him in writing within one month of registration of the application. If the institution decides to maintain its refusal to grant access to the document requested, it shall state the grounds for its refusal and inform the applicant of the remedies open to him, namely court proceedings and a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively.

2. In exceptional cases, the time-limit provided for in paragraph 1 may be extended by one month, provided that the applicant is notified in advance and that detailed reasons are given.

1. Where the applicant submits a confirmatory application, the institution shall reply to him in writing within one month of registration of the application, ***and if accepted transfer the documents to him in the same time period.*** If the institution decides to maintain its refusal to grant access to the document requested, it shall state the grounds for its refusal and inform the applicant of the remedies open to him, namely court proceedings and a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively.

(delete)

Failure to reply within the prescribed time-limit shall be treated as a positive decision.

(Amendment 15)
Article 7

1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy.

The costs of his doing so may be charged to the applicant.

2. Documents shall be supplied in an existing language version, regard being had to the preference expressed by the applicant.

1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, ***according to the choice made by the applicant***

The ***reasonable*** costs of his doing so may be charged to the applicant.

2. Documents shall be supplied in an existing language version. ***If it exists in the language requested by the applicant, this version shall be forwarded to him.***

(Amendment 16)
Article 9

Each institution shall take the requisite measures to inform the public of the rights they enjoy as a result of this Regulation. Furthermore, to make it easier for citizens to exercise their rights arising from this Regulation, each institution shall provide access to a register of documents. (delete)

Justification

Similar provisions are suggested in articles 3a and 4a.

(Amendment 17)
Article 11

This Regulation shall be binding in its entirety and directly applicable in all Member States.

The rules on register of documents will be applied to documents which are submitted to the institution after this regulation has entered into force.

(delete)

Justification

Deletion of second part because this regulation is not intended as a harmonising legal act.

⁰ OJ C 177, 27.06.2000, p. 70

⁰ OJ L 340, 31.12.1993, p. 43; Decision as last amended by Decision 96/705/EC, ECSC, Euratom (OJ L 325, 14.12.1996, p. 19).

⁰ OJ L 46, 18.2.1994, p. 58; Decision as amended by Decision 96/567/EC, ECSC, Euratom (OJ L 247, 28.9.1996, p. 45).

⁰ OJ L 263, 25.9.1997, p. 27.

⁰ OJ L 340, 31.12.1993, p. 43; Decision as last amended by Decision 96/705/EC, ECSC, Euratom (OJ L 325, 14.12.1996, p. 19).

⁰ OJ L 46, 18.2.1994, p. 58; Decision as amended by Decision 96/567/EC, ECSC, Euratom (OJ L 247, 28.9.1996, p. 45).

⁰ OJ L 263, 25.9.1997, p. 27.