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Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

17 April 2001

PE 302.231/71-87/REV

## PROPOSED COMPROMISE AMENDMENTS 71-87 (RECITALS) (Rule 69 of the Rules of Procedure)

**DRAFT REPORT** by Michael Cashman

(PE 302.231)

on the proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents  
Proposal for a regulation COM(2000) 30 – C5-0057/2000 – 2000/0032(COD)

Text proposed by the Commission

Amendments

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(Compromise Amendment 71, by Michael Cashman and Hanja Maij-Weggen)  
Recital 2

(2) 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 *vis-à-vis* the citizen in a democratic system.

(2) 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 as laid down in Article 6 of the Treaty on European Union and in the Charter of fundamental rights of the European Union.***

Or. en

(This text replaces Amendments 2,3,4, 5 and 7 adopted on 16 November 2000.)

*Justification:*

*These recitals reflect the compromise with the Council and seek to give a more coherent and concise preamble to the Regulation.*

(Compromise Amendment 72, by Michael Cashman and Hanja Maij-Weggen)

Recital 3

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| (3) The conclusions of the European Councils held at Birmingham, Edinburgh and Copenhagen stressed the need to introduce greater transparency into the work of the Union institutions. <b><i>Following these conclusions, the institutions launched a series of initiatives aimed at improving</i></b> the transparency of the decision-making process <b><i>by targeting information and communication measures more effectively and adopting rules on public access to documents.</i></b> | (3) The conclusions of the European Councils held at Birmingham, Edinburgh and Copenhagen stressed the need to introduce greater transparency into the work of the Union institutions. <b><i>This Regulation consolidates the initiatives that the institutions have already taken with a view to improving</i></b> the transparency of the decision-making process. |
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Or. en

(This text replaces Amendment 8 adopted on 16 November 2000.)

*Justification:*

*See the justification to Compromise Amendment 71.*

(Compromise Amendment 73, by Michael Cashman and Hanja Maij-Weggen)

Recital 4

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| (4) The purpose of this Regulation is to <b><i>widen</i></b> access to documents <b><i>as far as possible, in line with the principle of openness. It puts into practice the right of access to documents</i></b> and <b><i>lays</i></b> down the general principles and | (4) <b><i>The purpose of this Regulation is to give the fullest possible effect to the right of</i></b> access to documents and <b><i>to lay</i></b> down the general principles and limits on such access in accordance with Article 255(2) of the Treaty. |
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limits on such access in accordance  
with Article 255(2) of the *EC* Treaty.

Or. en

*(This text replaces Amendment 10 adopted on 16 November 2000.)*

*Justification:*

*See the justification to Compromise Amendment 71.*

(Compromise Amendment 74, by Michael Cashman and Hanja Maij-Weggen)  
Recital 5

(5) Since the question of access to documents is not covered by provisions of the ECSC and Euratom Treaties, this Regulation *will* apply to documents concerning the activities covered by those two Treaties. ***This was confirmed by Declaration No 41 attached to the Final Act of the Treaty of Amsterdam.***

(5) Since the question of access to documents is not covered by provisions of the ECSC and Euratom Treaties, ***in accordance with Declaration No 41 attached to the Final Act of the Treaty of Amsterdam, the principles and limits in*** this Regulation *should* apply to documents concerning the activities covered by those two Treaties.

Or. en

*Justification:*

*This text is more closely based on Declaration 41 and was not previously amended.*

(Compromise Amendment 75, by Michael Cashman and Hanja Maij-Weggen)  
Recital 5a (new)

(5a) ***Wider access to documents should be granted to documents in cases in which the institutions are acting in their legislative capacity, including under delegated powers, while at the same time preserving the effectiveness of their decision-making process. Such documents should be made directly accessible to***

*as great an extent as possible.*

Or. en

*(This text replaces Amendment 13 adopted on 16 November 2000.)*

*Justification:*

*See the justification to Compromise Amendment 71.*

(Compromise Amendment 76, by Michael Cashman and Hanja Maij-Weggen)  
Recital 6

(6) *Under* Articles 28(1) and 41(1) of the Treaty on European Union, the right of access also applies to documents relating to the common foreign and security policy and to police and judicial cooperation in criminal matters.

(6) ***In accordance with*** Articles 28(1) and 41(1) of the Treaty on European Union, the right of access also applies to documents relating to the common foreign and security policy and to police and judicial cooperation in criminal matters.

Or. en

*Justification:*

*This recital was not previously amended and this is a linguistic improvement.*

(Compromise Amendment 77, by Michael Cashman and Hanja Maij-Weggen)  
Recital 6a (new)

(6a) ***In order to ensure the full application of this Regulation to all activities of the Union, all agencies established by the institutions should apply the principles laid down in this Regulation.***

Or. en

*(This text replaces Amendments 11 and 59 adopted on 16 November 2000.)*

*Justification:*

*This makes it clear that the agencies established by the institutions will apply the Regulation.*

(Compromise Amendment 78, by Michael Cashman and Hanja Maij-Weggen)  
Recital 6b (new)

- (6b) *On account of their highly sensitive content, certain documents should be given special treatment. Arrangements for informing the European Parliament on the content of such documents should be made through interinstitutional agreement.***

Or. en

*(This text replaces Amendment 6 adopted on 16 November 2000.)*

*Justification:*

*This takes into account the Council concerns regarding sensitive documents. Although special treatment may be given to sensitive documents, the Parliament should be informed of such cases.*

(Compromise Amendment 79, by Michael Cashman and Hanja Maij-Weggen)  
Recital 7

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| (7) In order to bring about greater openness in the work of the institutions <b><i>and in line with current national legislation in most of the Member States</i></b> , access to documents should <b><i>be extended to include all documents held</i></b> by the European Parliament, the Council and the Commission. | (7) In order to bring about greater openness in the work of the institutions and access to documents should <b><i>be granted</i></b> by the European Parliament, the Council and the Commission <b><i>not only to documents drawn up by the institutions, but also to documents received by them. In this context, it is recalled that Declaration No 35 provides that a Member State may request the</i></b> |
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***Commission or the Council not to communicate to third parties a document originating from that State without its prior agreement.***

Or. en

*(This text replaces Amendment 12 adopted on 16 November 2000.)*

*Justification:*

*See the justification to Compromise Amendment 71.*

(Compromise Amendment 80, by Michael Cashman and Hanja Maij-Weggen)  
Recital 8

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| (8) <b><i>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.</i></b> | <b><i>Deleted.</i></b> |
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Or. en

*(This text replaces Amendment 14 adopted on 16 November 2000.)*

*Justification:*

*This text and Compromise Amendment 82 below deal with the existing rules which concern access to documents of the institutions.*

(Compromise Amendment 81, by Michael Cashman and Hanja Maij-Weggen)  
Recital 9

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| (9) <b><i>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</i></b> | (9) <b><i>In principle, all documents of the institutions should be accessible. However, certain public and private interests should be protected by way of exceptions. The institutions</i></b> |
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*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.

should be entitled to protect their internal consultations and deliberations *where necessary to safeguard their ability to carry out their tasks. In assessing the exceptions, the institutions should take account of the principles in Community legislation concerning the protection of data, in all areas of Union activities.*

Or. en

*(This text replaces Amendments 15, 33 and 60 adopted on 16 November 2000.)*

*Justification:*

*See the justification to Compromise Amendment 71.*

(Compromise Amendment 82, by Michael Cashman and Hanja Maij-Weggen)  
Recital 9a (new)

**(9a)** *All rules concerning access to documents of the institutions should be in conformity with this Regulation.*

Or. en

*(This text replaces Amendment 14 and Amendment 26, paragraphs 2 and 2a and Amendment 58 adopted on 16 November 2000.)*

*Justification:*

*This text replaces the Commission recital 8.*

(Compromise Amendment 83, by Michael Cashman and Hanja Maij-Weggen)  
Recital 10

(10) In order to ensure that the right of access is fully ***observed, the present***

(10) In order to ensure that the right of access is fully ***respected, a two-stage***

two-stage administrative procedure, with the possibility of court proceedings or complaints to the Ombudsman, should ***be maintained***, whilst the principle should be introduced whereby at the confirmatory stage no response is treated as a positive response) ***whilst the principle should be introduced whereby at the confirmatory stage no response is treated as a positive response.***

administrative procedure, with the ***additional*** possibility of court proceedings or complaints to the Ombudsman, should ***apply***

Or. en

*(This text replaces Amendment 16 adopted on 16 November 2000.)*

*Justification:*

*See the justification to Compromise Amendment 71.*

(Compromise Amendment 84, by Michael Cashman and Hanja Maij-Weggen)  
Recital 11

(11) Each institution should take the measures necessary to inform the public about the new provisions in force; ***furthermore, to*** make it easier for citizens to exercise their rights ***arising from this Regulation***, each institution should provide access to a register of documents.

(11) Each institution should take the measures necessary to inform the public about the new provisions in force ***and train their staff to assist citizens exercising their rights arising from this Regulation. To*** make it easier for citizens to exercise their rights, each institution should provide access to a register of documents.

Or. en

*(This text replaces Amendments 9, 17, 18 and 19 adopted on 16 November 2000.)*

*Justification:*

*See the justification to Compromise Amendment 71.*

(Compromise Amendment 85, by Michael Cashman and Hanja Maij-Weggen)  
Recital 12

(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.

(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 *loyal cooperation* 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.

Or. en

*(This text replaces Amendments 20 adopted on 16 November 2000.)*

*Justification:*

*See the justification to Compromise Amendment 71.*

*(Compromise Amendment 86, by Michael Cashman and Hanja Maij-Weggen)*

Recital 12 a (new)

**(12a) This Regulation does not limit the rights of access to documents of the Member States, judicial authorities or investigative bodies.**

Or. en

*(This text replaces parts of Amendment 27, paragraphs 2, 3 and 5 adopted on 16 November 2000.)*

*Justification:*

*Some parts previously adopted in the articles have been moved to the recitals.*

(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.***

***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 documents<sup>1</sup>, Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents<sup>2</sup> and European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents<sup>3</sup>.

(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.

***The*** Council Decision 93/731/EC of 20 December 1993 on public access to Council documents<sup>1</sup> ***as amended,*** Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents<sup>2</sup> and European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents<sup>3</sup> ***and the rules on confidentiality of Schengen documents should therefore, if necessary, be modified or be repealed.***

Or. en

*(This text replaces Amendment 22 adopted on 16 November 2000.)*

*Justification:*

*See the justification to Compromise Amendment 71.*

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<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> OJ L 263, 25.9.1997, p. 27.