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PRESIDENCY NOTE

to : Delegations

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Subject: Proposal for a Regulation of the European Parliament and of the Council
regarding public access to European Parliament, Council and Commission
documents

Delegations will find attached the French Presidency compromise as it stands following the discussion held in Coreper (Part 2) on 20 December 2000.

Questions that need to be examined in detail are set out between square brackets in the text.

PRESIDENCY COMPROMISE

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL REGARDING PUBLIC ACCESS TO EUROPEAN PARLIAMENT, COUNCIL AND COMMISSION DOCUMENTS

The European Parliament and the Council of the European Union,

Having regard to the Treaty establishing the European Community, and in particular Article 255(2) thereof,

Having regard to the proposal from the Commission ¹,

Acting in accordance with the procedure referred to in Article 251 of the Treaty establishing the European Community,

Whereas:

- (1) The second subparagraph of Article 1 of the Treaty on European Union, as amended by the Treaty of Amsterdam, enshrines the concept of openness, stating that "This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen."
- (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.
- (3) The conclusions of the European Council meetings held in Birmingham, Edinburgh and Copenhagen stressed the need to introduce greater transparency into the work of the Union institutions. Following these conclusions, the institutions launched a series of initiatives aimed at improving the transparency of the decision-making process by targeting information and communication measures more effectively and adopting rules on public access to documents.
- (4) The purpose of this Regulation is to lay down the principles, limits and conditions governing the right of access to European Parliament, Council and Commission documents enshrined in Article 255(1) of the EC Treaty and to widen access to documents as far as possible. [Its objective is not to harmonise existing national legislation on access to documents.]

¹ OJ C 177 E, 27.6.2000, p. 70.

- (5) Declaration No 41 attached to the Final Act of the Treaty of Amsterdam provides that the European Parliament, the Council and the Commission, when they act in pursuance of the ECSC and Euratom Treaties, should draw guidance from the provisions relating to transparency, access to documents and the fight against fraud in force within the framework of the EC Treaty.
- (6) Article 207 of the EC Treaty provides that for the purpose of applying Article 255(3), the Council shall elaborate in its Rules of Procedure the conditions under which the public shall have access to Council documents and define the cases in which it is to be regarded as acting in its legislative capacity. Consistent with this provision, greater access to documents should be granted to documents in cases in which the institutions are acting in their legislative capacity, while at the same time preserving the effectiveness of their decision-making process.
- (7) By virtue of Articles 28(1) and 41(1) of the Treaty on European Union, Article 255 of the Treaty establishing the European Community shall apply to the provisions relating to the areas referred to in titles V and VI of the Treaty on European Union, relating respectively to the common foreign and security policy, and to police and judicial cooperation in criminal matters.
- (8) Special procedural treatment has to be foreseen for certain documents on account of their highly sensitive content.
- (9) In order to bring about greater openness in the work of the institutions, access to documents should be extended to include not only documents drawn up by the European Parliament, the Council and the Commission, but also documents received from third parties which are in the possession of those institutions, while respecting the right of the author of a document to oppose its release. In this context, it is recalled that Declaration No 35 attached to the Final Act of the Treaty of Amsterdam provides that the principles and conditions referred to in Article 255(1) of the EC Treaty will allow a Member State to request the Commission or the Council not to communicate to third parties a document originating from that State without its prior agreement.
- (10) The present Regulation should apply to documents in whatever form, while preserving the possibility of the institutions to protect the expression of personal opinions and discussions and the provision of advice as part of internal consultations and deliberations.
- (11) The public interest, the privacy and integrity of the individual and certain economic interests of natural or legal persons should be protected by way of mandatory exceptions. The interest in preserving the institutions' decision-making process should be balanced against the public interest in the disclosure of the document.
- (12) This regulation is without prejudice to specific rules which grant the applicant wider access to documents, including the right of an individual to have access to his personal file, and to rights of the public to information acquired under instruments of international law to which the Community is a party or acts of the institutions implementing them.

- (13) The two-stage procedure which is presently applied for handling requests for access to documents, including the possibility of court proceedings or complaints to the Ombudsman, should be maintained, while clarifying that applications are to be dealt with promptly. It should also be guaranteed that throughout the procedure documents to which, by virtue of the rules adopted by the institution in question, access is limited within the institution to persons specifically authorised to this effect, are examined only by those persons.
- (14) [In order to ensure the uniform application of the present Regulation, any Member States' authority which receives an application for a document of an institution which has not yet been released by the institution concerned should forward it promptly to this institution for a decision to be taken. The same mechanism should apply between the institutions.]
- (15) Each institution should take the necessary measures to inform the public about the provisions governing the right of access to its documents. In order to facilitate this right, each institution should provide access to a register of documents,

HAVE ADOPTED THIS REGULATION:

Article 1
General principle and beneficiaries

1. Any citizen of the European Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission (hereinafter "the institutions") documents, subject to the principles, limits and conditions defined in the present Regulation.
2. The institutions may under the same conditions grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.
3. The institutions shall according to their own Rules of Procedure determine which categories of documents will be directly accessible to the public, especially those relating to their legislative activities.
4. This Regulation shall be without prejudice to rights of access to documents held by the institutions which might follow from instruments of international law to which the Community is a party or acts of the institutions implementing them.

Article 2
Scope

1. This Regulation shall apply to all documents held by an institution, that is to say, documents drawn up by it or received from third parties and in its possession, in all areas of activity of the European Union.
2. This Regulation shall also apply to sensitive documents as defined in Article 3(b). Those documents shall receive a special procedural treatment.

Article 3
Definitions

For the purpose 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), excluding those for internal use as part of preliminary consultations and deliberations within the institutions such as discussion documents, unfinished documents or draft documents and documents whose content reflects personal opinions.
- (b) "sensitive documents" shall mean documents classified as "Top Secret", "Secret" or "Confidential" on account of the sensitivity of their content in conformity with the rules adopted by the institution concerned.
- (c) "third party" shall mean any natural or legal person, or any entity outside the institution concerned, including the Member States, other Community or non-Community institutions and bodies and non-member countries.

Article 3A
Applications

1. Applications for access to a document shall be made in writing in one of the languages referred to in Article 314 of the EC Treaty and in a sufficiently precise manner to enable the institution to identify the document. The applicant is not obliged to state reasons for his application.
2. If an application is not sufficiently precise the institution shall ask the applicant to specify the application and shall assist the applicant in doing so, e.g. by providing information on the use of the public registers of documents.
3. In the event of general and repetitive applications or applications relating to very large documents or a very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution.

Article 4
Exceptions

1. The institutions shall refuse access to documents where disclosure would undermine the protection of:
 - (a) the public interest as regards:
 - public security;
 - defence and military matters;
 - international relations;
 - relations between a Member State and an institution of the Community, or between the institutions of the Community and non-Community institutions;
 - the financial, monetary or economic policy of the Community or a Member State;
 - court proceedings;
 - efficiency of inspections, investigations and audits;
 - infringement proceedings, including the preparatory stages thereof;
 - [the ability of the institutions to seek the advice of their legal services];
 - (b) privacy and the integrity of the individual, in particular as protected by Community legislation regarding the protection of personal data;
 - (c) economic interests of a natural or legal person concerning in particular:
 - business and commercial secrets;
 - intellectual and industrial property;
 - information on costs and tenders in connection with award procedures before these procedures are completed.
2. Access to a document which relates to a matter where the decision has not been taken by the Institutions may be denied if its disclosure could seriously undermine the Institution's decision-making process, unless it is clearly in the public interest to disclose the document.
3. [Access to a document provided by a Member State shall be refused if the Member State asks the document not to be disclosed without its prior consent.

In cases not covered by the precedent subparagraph, the institution shall consult the third party unless it is clear that the documents requested can be released without prejudice to the third party.

4. Access shall be refused to sensitive documents if their originator has not given its consent.]

Article 5
Processing of initial applications

1. Applications for access to documents shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. In any event, within one month from registration of the application, the institution shall either grant the applicant access to all the documents applied for or, in a written reply, inform the applicant of the reasons for the total or partial refusal and of his right to make a confirmatory application in accordance with paragraph 2.

Initial applications for sensitive documents shall be handled only by those persons who have a right to acquaint themselves with those documents according to the internal rules of the institution concerned.

2. In the event of a total or partial refusal, the applicant may, within one month of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.
3. In exceptional cases, e.g. in the event of an application relating to very large documents or to a very large number of documents, the one-month 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.
4. Failure to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.
- [5. When a Member State's authority receives an application for access to a document of an institution which has not yet been released by the institution concerned, it shall forward the application promptly to the institution for a decision to be taken.

When an institution receives an application for access to a document of another institution, it shall forward the application to this other institution.]

Article 6
Processing of confirmatory applications

1. A confirmatory application shall be handled promptly. In any **event**, within one month from registration of such an application, the institution shall either grant access to the documents requested or, in a written reply, state the reasons for total or partial refusal. Should the institution deny access in total or in part, it shall inform the applicant of the remedies open to him, namely instituting court proceedings against the institution and/or making a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively.

Confirmatory applications for sensitive documents shall be handled only by those persons who have a right to acquaint themselves with those documents according to the internal rules of the institution concerned.

2. In exceptional cases, e.g. in the event of an application relating to very large documents or to a very large number of documents, 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.
3. Failure by the institution to reply within the prescribed time-limit shall be considered as a negative reply and entitle the applicant to refer the matter to the Ombudsman and/or to the Court of Justice, under the relevant provisions of the Treaties.

Article 7
Exercise of the right to access

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

The cost of his doing so may be charged to the applicant. The charge has to be limited to an amount which will not exceed the real cost of production and sending of the copies.

2. If a document has already been released by the institution concerned and is easily accessible to the applicant, the institution may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document.
3. Documents shall be supplied [in an existing version and form] as requested by the applicant if they are already available in that form, including electronically or in an alternative format, such as Braille, large print or tape, and regard being had to the preference expressed by the applicant.
4. If only parts of the requested document are covered by any of the exceptions in Article 4, the remaining parts of the document shall be released.

Article 8
Reproduction for commercial purposes or other forms of economic exploitation

This Regulation shall be without prejudice to any existing rules on copyright which may limit the applicant's right to reproduce or exploit the released documents.

Article 9
Information and registers

1. Each institution shall take the requisite measures to inform the public of the rights they enjoy arising from 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.
2. The public register shall not include sensitive documents.

Article 10
Effect

Each institution shall adopt in its Rules of Procedure the provisions required to give effect to this Regulation. Those provisions shall take effect on ... (three months after the adoption of this Regulation).

Article 11
Entry into force

This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Communities. It shall be applicable from ... (three months from the date of adoption of this Regulation).

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

For the European Parliament
The President

For the Council
The President
