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<Commission>{AFET}Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy</Commission>

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<Date>{14-09-2000}14 September 2000

<TitreType>DRAFT OPINION</TitreType>

<CommissionResp>of the {AFET}Committee on Foreign Affairs, Human Rights,
Common Security and Defence Policy/CommissionResp>

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

<Titre>on the proposal for a Council decision on right of access to EP, Council and Commission documents</Titre>

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

Draftsman: <Depute>Cecilia Malmström</Depute>

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PE <NoPE>294.779</NoPE>



<Procedure>PROCEDURE

The {AFET} Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy appointed Cecilia Malmström draftsman at its meeting of {12-07-2000} 12 July 2000.

It considered the draft opinion at its meeting(s) of 11 October 2000....

At the latter/last meeting it adopted the amendments below by ... votes to ..., with ... abstention(s)/unanimously.

The following were present for the vote: ... chairman/acting chairman; ... vice-chairman; ..., vice-chairman; ..., ufor ...), ... (for ... pursuant to Rule 153(2)), ... and

SHORT JUSTIFICATION

Introduction

The activities of public life are of concern to all citizens. This is The activities of public life are of concern level, level, as well as level, as well as on the national and European levels. A intointo the work of public institutions, is one of the cornerinto the work of public institutions, is one ensurensuring ensuring public scrutiny, openness and transparency in the work of the public authorities assured assured. It is only by giving citizens the right of participation in pubassured. It is only by giving citizens be fuelled and flourish.

ResearchResearch have shown a clear relation between an open Research have shown a clear relation corrupcorruption.corruption. The knowledge that documents and correspondence can be checked can prece officialsofficials and politicians fofficials and politicians from abusing their decreased corruption and decreased corruption and mismandecreased corruption and mismandecr

IncreasedIncreased competencies and a new role for the European Union has increased public interest in thethe European integration process during the past decade. The recent develothe European integration process criticeritical voices against the EU administration, where many institutions lack comprehensive rulecritic onto access to document access to documents, as well as a working culture signified forfor a regulation providing clear afor a regulation providing clear anfor a regulation providing clear and secrecy and elimportant mode in the cuimportant role in the cuimportant role in the cuimportant role in the current reform of the Eurocitizens.

The legal base

The The Amsterdam Treaty has first of all amended the second paragraph of Article 1 oThe Amsterdam Treaty pointpoint out that Union decisions must be taken not only as closely as possible also as openlalso as openly aalso as openly as possible. Furthermore, a new Article 255 TUE has been establishing stablishing the right of access of Union citizens and of natural orestablishing the right of access of EP, Council and Commission documents. <DataOfDocument>

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yearsyears and in years and in codecisionyears and in codecision with the EP, the general principles and li private private interest governing this right of access, whilst each Institution private interest governing this rules rules of procedure specific provisions regarding access to its documents. To this resperules of proceduration Declaration to the Final Act on Article 255 of the TECD claration to the Final Act on Article thethe Commission or the Council the Commission or the Council from that state without its prior agreement.

The The introduction of transparency and openness in the procedures of the The introduction of transparency principles of the European Union, as well principles accessaccess to the Institutions' documents undoubtedly constitute impaccess to the Institutions' docume openness openness. It is also a step in the right direction that the Council, in codecision with the EP, is toto establish the general principles of and limits on thito establish the general principles of and limit regrettable that the regrettable that the iregrettable that the implementing measures are Institutions, something which the EP explicitly opposes.

ItIt is very important that the new regulation wIt is very important that the new regulation will be appli mmattermatter of matter of good administration, even though article 255 TEC only provides a legal by covercover the Commission, Council and Parliament. In order to ensure cover the Commission, Council documedocuments held be all Community institutions, the Commission sho proposal for an additional regulation, based on article 308 TEU.

The Commission's Proposal

FollowingFollowing the CommissiFollowing the Commission's proposFollowing the Commission's proposFollowing the Commission's proposFollowing the Commission. The legislation wilThe legislation documents held by the thdocuments held by the three institutiondocuments held by the three institutiondocuments held by the three institutiondocuments held by the three institutions. However, it is understood that access to a doby the institutions. However, it is understood that access to a doby the institutions. However, it is understood that access to a doby the institutions. However, it is understood that access to a doby the institutions. However, it is understood that access to a doby the institutions. However, it is understood that access to a doby the institutions. However, it is understood that access to a doby the institutions. However, it is understood that access to a doby the institutions. However, it is understood that access to a doby the institutions. However, it is understood that access to a doby the institutions. However, it is understood that access to a doby the institutions. However, it is understood that access to a doby the institutions. However, it is understood that access to a doby the institutions. However, it is understood that access to a doby the institutions. However, it is understood that access to a doby the institutions. However, it is understood that access to a doby the institutions. However, it is understood that access to a doby the institutions. However, it is understood that access to a doby the institutions. However, it is understood that access to a doby the institutions. However, it is understood that access to a doby the institutions. However, it is understood that access to a doby the institutions. However, it is understood that access to a doby the institutions that access to a doby the institutions that access to a doby the institution will be institutions.

The The term "document" is defined as any form of content irrespective of the irrespective of the irrespective of the issis carried. It will cover only administrative documents, i., i.e. any doc, i.e. any document on a topic we fallsfalls within the institution's remit, excluding documents expressing individual opifalls within the reflecting reflecting free and frank discussions or the prreflection consultations and deliberations, as well as iconsultation and deliberations, as well as iconsultation can be considered the equivalent of telephone conversations.

SinceSince the main task of the Committee on Foreign Affairs is to concentraSince the main task of the Codocuments documents related to the Common Foreign document reactions to the proposal are described in the justifications of the proposed amendments.

Scope of regulation within the CSFP field

Articles Articles 28Articles 28(1) Articles 28(1) of the Treaty on European Union expressly provide that the ri applies applies to documenapplies to documents relatingapplies to documents relating to the common fore then, then, in the case T-then, in the case T-14/98 Hautala vs. council, judgement of 19th of July 1 firstfirst instance accepted that documents related to securitfirst instance accepted that documents related to underunder tunder the general scope of the access rules and were not as a category excluded of interest ground.

The decision taken by the Council on 14 August 2000, excluding all EThe decision taken by the Counc thethe 1993 decision on public access, is the 1993 decision on public access, is thus unaccthe 1993 decision on EU external action of 6 September 2000 deplores this decision.

The Commission's prThe Commission's proposaThe Commission's proposal includes a number of documents documents based on a "harm test". This means that access to documents widocuments based unnleunlessunless disclosure might seriously harm certain specific interests, which are spelled out in ArticleArticle 4. As far as CFSP is concerned, this article states that the institutions shalthe institutions saccessaccess to documents where disclosure could seriouscess to documents where disclosure could serious interinterest and interest and in particular defence and international relations, as well as confident requested by the third party that supplied the document or therequested by the third party that supplied the legislation of the Member State.

AllAll national legislation in the field All national legislation in the field apply limitaAll national legislation is and and security policy. This kind of restrictions are nand security policy. This kind of restrictions are nand security policy. This kind of restrictions are not securitySecurity and Defence Policy, and should be laid down as clear and detailed exceptions to the principle of public principle of public access. By allowing institutions to limit access groungroundsgrounds of defence and military matters or vital interests relating to the EU's internatgrounds relations, relations, the necessary confidentiality, as that requested by NATrelations, the necessary confidential toto the recent decision taken by the Council, to the recent decision related related to non-military crisis management. All requests for arelated to non-military crisis management of the document's classification, should be handled case-by-case.

Unfortunately, Unfortunately, the Commission's proposal does not deal with confidentiality. Even worse, the CouncilCouncil has recently and unilaterally reacting by producing a first Decision of the Secretary GeneralGeneral of the Council/ High Representative for the CFSP of 27 July 2000 on meaGeneral of the C thethe the protection of classified information applicable to the General Secretariat of the Cthe protection of secondsecond Council Decision on public access to Council documents was August. August. It is true that theses two Decisions August. It is true that theses two Decisions rAu Nevertheless, Nevertheless, it is obvious that these two extemporary Decisions neither Nevertheless, it is obvious the provisions of Article 255 Tthe provisions of Article 255 TEC -impthe provisions of Article 255 TEC ante"ante" affect the scope of the forthcoming Regulation under discussion. It is then indispensaante" affort to find as soon as possible a negotiated solution with the Council, in the framto find as soon as possibility interinstitutional dialogue which takes places regularly between the two instinterinstitutions before the deadline to refer the matter to the Court of Justice expires on 23 October.

Parliamentary scrutiny of ESDP documents and control mechanisms

In its recent resolution of 6 September on EU external action priorities the EP has urged the Council to address matters relating to parliamentary scrutiny of the European security and

PE <NoPE>294.779</NoPE>

defence policy (ESDP) and deplored the decision by the Council to exclude ESDP documents from application of the Council's decision on access to documents. This necessary parliamentary scrutiny of the documents classified as secrets and excluded from public access could be carried out by one of the following "ad hoc" organs:

The The Committee on Foreign Affairs, Human Rights, The Committee on Foreign Affairs, Hu
Policy as a whole;
The Enlarged Bureau of this Committee;
The The "ad hoc" Standing Delegation for the relations The "ad hoc" Standing Delegation for
Assembly Assembly actually being setting up within the Committee on Foreign AffaiAssembly act
Rights, Common Security and Defence Policy.
AA Selected CA Selected Committee of A Selected Committee of 5 up to 7 EP Members of the
(namely(namely AFET, LIBE a(namely AFET, LIBE and CONST(namely AFET, LIBE and CONST(na
could form this committee.

Registers

The The Commission's proposal indicate Commission's proposal indicate Commission's proposal indicate arising from this Regulation, each institution shall provide access to a register of documents.

AllAll documeAll documents heAll documents held by an institution should be included in the register. classified documents, to which access may on certain grounds be denied.classified documents, to an public register covering a public register covering all documents, citizens can get a clactivities, despite the fact that not all documents are disclosed.

Administration of requests

Requests Requests for documents should be handled speedily by tRequests for documents should be hand twotwo weeks. For all negative replies to requests, the institution must give reasons for the denial ofof access. The citizen should also be informed on how to ask for reconsideration of of a decision and other remedies available.

The The institutions need to make further preparations for the implementation of the nell regulation. The number of requests for access, resultiregulation. The number of requests increase substantially, nincrease substantially, no doubtincrease substantially, no doubt leading staff.staff. In this respect, itstaff. In this respect, it staff. In this respect, it is very important to get su amongamong the officials dealing with public access. "Transparency trainingamong the officials dealing ororgorganisedorganised for all civil servants dealing with access to documents, providing education about the practical consequences of the regulation, as well as the ideathe practical consequences of the regulation are effective administration of requests and improved protection of the to a more effective admit the individual. Building nthe individual. Building new bureaucracies only to handle avoided to the greatest possible extent.

The The European institutions are unfamiliar to most citizens. Therefore it iThe European institutions as officialsofficials are service-minded and encouraged to assist citizens in how afficials are service-minded accessaccess taccess to documents can be made. The Ombudsman's Code of Good Administration Behaviour provides comprehensive recommendations to the institutions in this respect.

Conclusions and Proposals

OpennessOpenness and maximum transparency also in CFSP matters must be Openness and maximum transparency mainmain concern of the proposed Remain concern of the proposed Regulation.main concern of the documents relating to CFSP.

The The derogation to th The derogation to the above ment The derogation to the above mentioned general pri limitlimit access limit access to documelimit access to documents where disclosure could significantly under the the public interest on defence and international public interest restricted restricted way. This derogation is not to restricted way. This derogation is not to be apprestricted wordly Only Only those documents, whose disclosure could harm military operations, risk human lives Only affect affect vital interest of EU's international fect vital interest of EU's international organisations, negotiations, etc) could be excludiith third countries public public access. In that case, the institution refusing shallshall state the grounds for its refusal, provide individual proof and inform the applicant of the remedies open to him. Each application should be handled case by case.

The The public register of documents kept in each institution should contain reference The public register documents documents held, including classified information. In case of classified documents held, including rounds for refusal should be mentioned.

OfOfficials Officials dofficials dealing with access to documents should undergo special "Transparency Trai providing for increased understanding of the new regulaproviding for increased understanding of that all officials are able to inform citizens on how and where to request access to documents.

AmongAmong the cuAmong the curAmong the current existing possibilities the most convenient way of a parliamentary scrutiny of the CFSP classifieparliamentary bebe through the "ad hoc" Standing Delegation for the relationsbe through the "ad hoc" Standing Delegation AAssemblyAssembly directly answerable before the Committee on Foreign Affairs, Human Rig Common Security and Defence Policy as well as the Plenary Sitting.

Nevert Neverthel Nevertheless, should a similar parliamentary framework were to be established in order guaranteeguarantee the parliamentary scrutiny of all classified documenguarantee the parliamentary scrutiny thethe best formula could be by the above mentioned Select Committee of 5the best formula could be by the above for the most concerned Committees, or the leaders of the political Committee would be then directly answerable to the Plenary Sitting.

</AmJust>

AMENDMENTS

The {AFET}Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy 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		



<Amend>(Amendment <NumAm>1</NumAm>) <TitreAm>Article 1</TitreAm>

General principle and beneficiaries

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.

General principle and beneficiaries

- 1. 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 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.
- 2. The institutions shall 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. This Regulation is without prejudice to the rights of judicial authorities, investigative bodies and Parliaments.

<*TitreJust>Justification*:</*TitreJust>*

<AmJust>TheThe words "widest possible" access to documents shoThe words "widest possible" access thatthat there is a presumtion for publicity there is a presumtion for publicity. The lithat there RegulationRegulation toRegulation to naRegulation to natural and legal persons residing or registere problematic formulation problematic formulation in Articleroblematic formulation in Article thethe beneficiaries a limitation which seems neither justified nor practical in a globalizing worlworldworld world (paragraph 2). The proposed new paragraph 3 aims at clarifying that the pre RegulationRegulation deals with public access to documents and, thus, is ofRegulation deals with public rights of judicial authorities, bodicial authorities, bodici

Scope

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

Access to documents from third parties

Scope

1. This Regulation shall apply to all documents held by the institutions, whether drawn up by them or received n 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 documets exist.

2. This Regulation shall not apply to documents *falling under the* specific rules *listed in Annex 1*²

<TitreJust>Justification:</TitreJust>

<AmJust>TheThe right of access to documents should be applicable also for documents from thirdthird parties under the existing system. Athird parties under the existing system. Any exemptthird partiely under under Aunder Article 4. The excemtion regarding documents already published or access pupublic by other by other means is could in the reality lead to that a document is not available (the(the edition might be sold (the edition might be sold out) an(the edition might be sold out) and should there is too vaguis too vague and it is therefore impossible to foreseen the concequences of the word too Existing Existing specific rules should be examined and where justified included in an Existing specific rules regulation.

Scope

3. This regulation does not preclude the right of Member States, to grant access, in accordance with their national legislation, access to documents held, drawn up or received by them.

<TitreJust>Justification:</TitreJust>

<AmJust>TheThe Regulation should be without prejudicet to higher standardsThe Regulation should be we national legislational legislation. national legislation. Thus, the scope of national legislation grant should not be limited by the Regulation.

</Amend><LANG:EN><Amend>(Amendment <NumAm>4</NumAm>)
<TitreAm>Article 3</TitreAm>

Definitions

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,

Definitions

For the purposes of this Regulation:
(a) "document" shall mean any content held, drawn up or received by the institution whatever its medium (written

PE <NoPE>294.779</NoPE>

10/20

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visual or audiovisual recording); only 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;
- (f) "third party" shall mean any natural or legal person, or any entity outside the institution, including the Member States, other Community and non-Community institutions and bodies and non-member countries.
- A list of the committees referred to in points (d) and (e) of the first paragraph

on paper or stored in electronic form or as a sound, visual or audiovisual recording); "document" shall not mean informal information which serves the provision of advice or the free exchange of ideas within the institution. However, this regulation shall apply to a "document" as soon as the institution has taken a formal decision, filed or sent a document to other institutions or third parties.

- (b) "institutions" shall mean the European Parliament, the Council and the Commission as well as subsidiary bodies and independent regulatory agencies as listed in Annex II³
- (c) Delete
- (d) **Delete**

(e) Delete

(f) **Delete**

Delete

shall be drawn up as part of the rules giving effect to this Regulation, as provided for in Article 10.

<TitreJust>Justification:</TitreJust>

<AmJust>TheThe basicThe basic The basic principle of excluding working document from the scope of applicis is ais acceptable but the wording of the Commission text regarding internal working documents is far too vague, It excludes even documentis far too vague, It excludes even institutions or Member States and that is not acceptable. Any possible exemptiinstitutions or Ministitutions should be dealt with under Article 4. The rinstitutions should be dealt with under independent regulatory agencies in the definition of independent regulatory agencies in the definition of the internal entities which all entities which exercise functions of the interpressly list them in an annex.

</Amend><LANG:EN><Amend>(Amendment <NumAm>5</NumAm>)
<TitreAm>Article 4</TitreAm>

Exceptions

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

- (a) the public interest and in 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,
- _ court proceedings,
- _ inspections, investigations and audits,
- _ infringement proceedings, including the preparatory stages thereof,
- _ the effective functioning of the institutions;
- (b) privacy and the individual, and in particular:
- _ personnel files,
- _ information, opinions and assessments given in confidence with a view to recruitments or 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

(-) -------

Exceptions

Public access to documents may be limited on the following grounds:

- (a) access may be denied on grounds of public interest where disclosure could significantly undermine
- public security,
- monetary stability,
- defence and military matters
- vital interest relating to the EU's international relations.

(b) access shall be denied where disclosure would be contrary to the protection, under law, of the right to privacy of an individual;

the economic interests of a specific natural or legal person and in particular:

- _ business and commercial secrets,
- _ intellectual and industrial property,
- _ industrial, financial, banking and commercial information, including information relating to business relations or contracts,
- _ information on costs and tenders in connection with award procedures; (d) confidentiality as requested by the third party having supplied the document or the information, or as required by the legislation of the Member State.

(c) access may also be denied on grounds of commercial secrecy where this outweighs the public and private interest in disclosure;

(d) confidentiality as requested by a Member State in accordance with declaration 35 on Article 255.1 of the Treaty establishing the European Community;

<TitreJust>Justification:</TitreJust>

<AmJust>TheThe list of exceptions proposed by the CommThe list of exceptions proposed by the Comfor the effor the exclusion for the exclusion of practically any document and the proposal does not distributed differential differential ferential ferential

The The exception concerning third party documents would undermine the whole idea The exception of public public access to documents and should therefore be deleted. This does not mepublic access to do are no legitimated rights of protection but they have to be covered by the other excemptions.

NoNo CFSP/ESDP documents should automatically be excluded from public access. Only those containing containing information that could risk lives, milcontaining information access, international organisations or neg from public access, after a case by case examination.

Processing of initial applications
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. In the event of repetitive applications and/or applications relating to very large documents, the institution concerned shall

Processing of initial applications
1. All 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 a sufficiently precise manner to enable the institution to identify the document. "in writing" also comprises the processing of an application by electronic means such as fax or e-mail.

confer with the applicant informally, with 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.
- 3. Where the institution gives a negative reply to the applicant, it shall inform him that, within one month of receiving the reply, he is entitled to make a confirmatory application asking the institution to reconsider its position, failing which he shall be deemed to have withdrawn the original 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-<u>limit</u> shall be treated as a negative response.

- 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.
- 3. Where the institution gives a negative reply to the applicant, it shall *give reasons* and inform him that he is entitled to make a confirmatory application asking the institution to reconsider its position.
- 4. In exceptional cases, the *two-week* time-limit provided for in paragraph 2 may be extended by *two weeks*, provided that the applicant is notified in advance and that detailed reasons are given.
- 5. The staff of the institutions shall as far as possible help and inform the citizens how and where applications for access to documents can be made.

<TitreJust>Justification:</TitreJust>

<AmJust>TheThe reference to Community languages (appliThe reference to Community languages (application as as it reflects it reflects the established Community practice. The insertion of the possibility to mapplication by electronic means seems appropriate.

The The term repetiti The term repetitive appl The term repetitive applications is deleted since it is open maymay be used against justified information needs of an active citizen. The one-may be used against justified information needs of an active citizen. The one-may be used against justified information needs of an active citizen. The one-may be used against justified information for reply by the institutions cannot be considered application administration. The introduction of coherent internal procedures and, in particular, of of a comprehensive register of documents by each institution, would sigof a comprehensive register of do timetime needed for processing requests. The provision concerning time needed for processing requests. The provision concerning time needed for processing requests. The replyreply on behalf of the institutions should be deleted, as it it should not be foreseen in a regulation regulation as an regulation as an alternative reaction of an application. The power to presapplicationapplication is withdrawn if the applicant does not reapplit to a request should be abolished as contrary to the objective of the regulation.

</Amend><LANG:EN><Amend>(Amendment <NumAm>7</NumAm>)
<TitreAm>Article 6</TitreAm>

Processing of confirmatory applications; remedies

- 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.

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

Processing of confirmatory applications; remedies

- 1. Where the applicant submits a confirmatory application, the institution shall reply to him in writing within *two weeks* 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 *two weeks*, provided that the applicant is notified in advance and that detailed reasons are given.

<*TitreJust>Justification*:</*TitreJust>*

<AmJust>SSeeSee the justification for the previous amendment. A failure to reply shouSee the june nevernever be treated as a positive decision since that could hanever be treated as a positive decision since according to Article 4 of this Regulation.

</Amend><LANG:EN><Amend>(Amendment <NumAm>8</NumAm>)
<TitreAm>Article 7</TitreAm>

15/20

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. 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.

An edited version of the requested

Exercise of the right to access

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

The costs which may be charged to the applicant should be based on the actual cost of making a copy and free of charge when the applicant is consulting documents on the spot

2. Documents shall be supplied in the form requested by the applicant if they are available in that form, e.g. electronically or in an alternative format, (such as Braille, large print or tape).

document shall be provided if part of the document is covered by any of the exceptions provided for in Article 4.

An edited version of the requested document shall be provided if part of the document is covered by any of the exceptions provided for in Article 4.

3. Parliamentary scrutiny of all documents excluded from public access should be assured by regularly informing a Select Committee of 5 up to 7 EP Members of the most concerned Committees, or the leaders of the political groups. This Select Committee would be then directly answerable to the Plenary Sitting.

<TitreJust>Justification:</TitreJust>

<Am<AmJust>TheThe The first two amendments aim at ensuring that the applicant may choose in which wayway he would like to have the information and that the costs forway he would like to have the information and to make sure that applicants who adiscourage or und documents documents on the spot can do so free of charge. The third amendment suggests that documents shall be made available in formats accessibledocuments shall be made available in formats accessibledocuments.

</Amend><LANG:EN><Amend>(Amendment <NumAm>9</NumAm>)
<TitreAm>Article 8</TitreAm>

Reproduction for commercial purposes or other forms of economic exploitation An applicant who has obtained a document may not reproduce it for commercial purposes or exploit it for any other economic purposes without the prior authorisation of the right-holder.

Reproduction for commercial gain
This regulation does not interfere with
existing rights with regard to documents
or information contained in documents
which the institutions have received by
third parties by virtue of intellectual or
industrial property legislation.

<*TitreJust>Justification:*</*TitreJust>*

<AmJust>TheThe Commission s proposal is far too vague and could, as itThe Commission s proposal is far againstagainst noagainst normal against normal journalistic use of a document for the purpublic.
/AmJust>

Information and registers
Each institution shall take the requisite
measures to inform the public of the rights

Information and registers

1. Each institution shall keep a register of all documents drawn up, received and

PE <NoPE>294.779</NoPE>

16/20 <PathFdR

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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.

sent by the institution. The register shall be easily accessible to all citizens and specify any classification of confidentiality of each document.

2. Each institution shall take the requisite measures to inform the public of the rights they enjoy as a result of this Regulation. The availability of alternative formats of documents shall be mentioned (such as Braille, large print or tape).

<*TitreJust>Justification*:</*TitreJust>*

<AmJust>TheThe proposal that all institutions should have a register of The proposal that all institution whereaswhereas the present formulation is far frowhereas the present formulation is far from adeq documents documents is not only a precondition for for a functioning regime for public access to dofor a functioning regime for public access to docufor a functioning regime for public access to docufor a toto the public, e.g. through posting it on theto the public, e.g. through posting it on theto the public, e.g. throwavereaware of and identify existing documeaware of and identify exist institutions institutions ininstitutions in facilitating the processing of requests. All documents should enteredentered into the register. The public must, obviouslentered into the register. The public must document, regardless of classification.

</Amend><LANG:EN><Amend>(Amendment <NumAm>11</NumAm>)
<TitreAm>Recital 0 (new)</TitreAm>

Trust and confidence in the European Union and its institutions can only be ensured if an open and democratic political debate and decision-making process takes place at all levels.

<*TitreJust>Justification:*</*TitreJust>*

<AmJust>AA truly democraticA truly democratic debate cA truly democratic debate cannot develop in institutions. To ensure such a debate iinstitutions. To ensure such a debate is neinstitution confidence, especially among young people, who are the future of Europe.

</Amend><LANG:EN><Amend>(Amendment <NumAm>12</NumAm>)
<TitreAm>Recital 2 a (new)</TitreAm>

Openness and transparency are also the best means to overcome any problems that may be caused by cultural and linguistic differences among the Member States

<TitreJust>Justification:</TitreJust>

<AmJust>CulturalCultural andCultural and lingusCultural and lingustic differences between Member State Transparency can help to avoid problems arising from these differences.

</Amend><LANG:EN><Amend>(Amendment <NumAm>13</NumAm>)
<TitreAm>Recital 3 a (new)</TitreAm>

The rules on public access to documents should be drafted as clearly as possible. They should outline the limits of access as well as the procedure for complaints.

<TitreJust>Justification:</TitreJust>

<AmJust>TheseThese rules aThese rules arThese rules are directed at a broad public that might be intered accessaccess to documents. It is therefore particularly important that it is clear and eaccess to documents that it is clear and eaccess to documents the rules are the same than the rules are directed at a broad public that might be intered accessaccess to documents. It is therefore particularly important that it is clear and eaccess to documents and eaccess to documents. It is therefore particularly important that it is clear and eaccess to documents. It is therefore particularly important that it is clear and eaccess to documents. It is therefore particularly important that it is clear and eaccess to documents. It is therefore particularly important that it is clear and eaccess to documents. It is therefore particularly important that it is clear and eaccess to documents.

</Amend><LANG:EN><Amend>(Amendment <NumAm>14</NumAm>)
<TitreAm>Recital 6 a (new)</TitreAm>

Whereas the principles laid down in this Regulation should also apply to the rules on public access to documents adopted by other Community institutions and bodies as a matter of good administration.

<*TitreJust>Justification*:</*TitreJust>*

<AmJust>SinceSince the Regulation is based on Article 255 of the Treaty the regulaSince the Regulation is applyapply to other institutionsapply to other institutions such as theapply to other institutions such as the E isis important is important to reis important to remember that the Court of Justice has stated "that as long as institutionsinstitutions has not adopted general rules on the right of public accessinstitutions has not adopted thethe Community institutions, the institutions must take measures as to the processing of such requests requests by virture of requests by virture of their requests by virture of their power of internal orgappropriate appropriate measures in order to ensure their internal operatiappropriate measures in order interests of good administration".

</Amend><LANG:EN><Amend>(Amendment <NumAm>15</NumAm>)
<TitreAm>Recital 10</TitreAm>

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18/20

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In order to ensure that the right of access is fully observed, the present two-stage of 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.

In order to ensure that the right of access is fully observed, the present two-stage of administrative procedure, with the possibility of court proceedings or complaints to the Ombudsman, should be maintained, delete the rest

<*TitreJust>Justification*:</*TitreJust>*

<AmJust>AA failure to reply should never be tA failure to reply should never be treateA failure to rep harm the interests that are protected according Article 4 of this Regulation.</AmJust>

</Amend><LANG:EN><Amend>(Amendment <NumAm>16</NumAm>) <TitreAm>Recital 11 a (new)</TitreAm>

> Each institution should encourage and educate the staff concerned to help and assist the citizens when they try to exercise their rights araising from this

<TitreJust>Justification:</TitreJust>

<AmJust>TheseThese rules are directed at a broaThese rules are directed at a broadThese rules are a accessaccess to documents. It is therefore particularly important that theaccess to documents. It is institutions can help the citizens getting access to the documents</AmJust>

</Amend><LANG:EN><Amend>(Amendment < NumAm>17</NumAm>) <TitreAm>Recital 12</TitreAm>

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 Community institutions and the Member States, Member States should take care not to hamper the proper application of this Regulation.

Whereas it is neither the object nor the effect of this Regulation to amend existing national legislation on access to documents.

(Delete the rest)

< TitreJust>Justification: </ TitreJust>

<AmJu<AmJust>This This amendment corresponds to Amendment 3 to Article 2This amendment (new).</AmJust></Amend>

⁰ OJ C XXXXXX.

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