<TitreType>DRAFT OPINION</TitreType>

Draftsman: <Depute>Cecilia Malmström</Depute>
<Procedure>PROCEDURE


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; ... draftsman; ..., ... (for ...), ... (for ... pursuant to Rule 153(2)), ... and ... .
SHORT JUSTIFICATION

Introduction

The activities of public life are of concern to all citizens. This is true both on the local and regional level, as well as on the national and European levels. Access to documents, providing insight into the work of public institutions, is one of the cornerstones of a democratic society. By ensuring public scrutiny, openness and transparency in the work of the public authorities can be assured. It is only by giving citizens the right of participation in public life, that a free debate can be fuelled and flourish.

Research have shown a clear relation between an open administration and a low level of corruption. The knowledge that documents and correspondence can be checked can prevent officials and politicians from abusing their power and influence, and thus contributes to decreased corruption and mismanagement. Transparency in the public institutions must be considered as a necessary means to guarantee rule of law, efficiency and a democratic debate, also on the European level.

Increased competencies and a new role for the European Union has increased public interest in the European integration process during the past decade. The recent deve
critical voices against the EU administration, where many institutions lack comprehensive rules on access to documents, as well as a working culture signified by transparency. There is a need for a regulation providing clear rules for access to documents, making openness the general rule and secrecy an exception. Such a regulation will also play an important role in the current reform of the European Union.

The legal base

The Amsterdam Treaty has first of all amended the second paragraph of Article 1 of the Treaty to point out that Union decisions must be taken not only as closely as possible to the citizens also as openly as possible. Furthermore, a new Article 255 TUE has been established establishing the right of access of Union citizens and of natural or legal persons residing in it, to EP, Council and Commission documents.

EN
It is up to the Parliament, the Council and the Commission. The legislation will cover documents held by the three institutions. However, it is understood that access to documents held by the institutions will be limited to those sent to the institution after the date of entry into application of the Regulation.

The term "document" is defined as any form of content irrespective of the medium on which it is carried. It will cover only administrative documents, i.e., any document on a topic which falls within the institution's remit, excluding documents expressing individual opinions or reflecting free and frank discussions and deliberations, as well as informal messages such as e-mail messages which are considered the equivalent of telephone conversations.

Since the main task of the Committee on Foreign Affairs is to concentrate on the major step forward compared to the current system, which only covers documents produced by the institutions. However, it is understood that access to documents received from a third state without its prior agreement.

It is up to the Council to determine, within a period of two years and in codecision with the EP, the general principles and limits on grounds of public or private interest governing this right of access, whilst each Institution will estab
Scope of regulation within the CSFP field

Articles 28(1) of the Treaty on European Union expressly provide that the right of access to documents relating to the common foreign and security policy (CFSP) shall, subject to the exceptions listed in Article 4, be subject to the protection of classified information applicable to the General Secretariat of the Council. However, the protection of classified information is not mandatory for the protection of interests related to non-military crisis management. All requests for access to documents related to non-military crisis management, irrespective of the document's classification, should be handled case-by-case.

Unfortunately, the Commission's proposal does not deal with confidentiality. Even worse, the Council has recently and unilaterally reacting by producing a first Decision of the Secretary General of the Council/High Representative for the CFSP of 27 July 2000 on measures for the protection of classified information applicable to the General Secretariat of the Council. The protection of classified information has been extended to non-military crisis management.

Nevertheless, it is obvious that these two extemporary Decisions neither could escape to the scope of the forthcoming Regulation under discussion. It is then indispensable to find as soon as possible a negotiated solution with the Council, in the framework of the interinstitutional dialogue which takes place regularly between the two institutions, and 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
defence policy (ESDP) and deprecated 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 Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy as a whole;
- The Enlarged Bureau of this Committee;
- The "ad hoc" Standing Delegation for the relations with the NATO-Parliamentary Assembly actually being set up within the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy.
- A selected Committee of up to 7 EP Members of the most concerned Committees (namely AFET, LIBE and CONV).
- Alternatively, the leaders of the political groups could form this committee.

Registers

The Commission's proposal indicates that to make it easier for citizens to exercise their rights arising from this Regulation, each institution shall provide access to a register of documents. All documents held by an institution should be included in the register, including classified documents, to which access may on certain grounds be denied. Being able to access a public register covering all documents, citizens can get a clear picture of an institution's activities, despite the fact that not all documents are disclosed.

Administration of requests

Requests for documents should be handled speedily by the institutions, within no more than two weeks. For all negative replies to requests, the institution must give reasons for the denial of access. The citizen should also be informed on how to ask for reconsideration of the decision and other remedies available.

The institutions need to make further preparations for the implementation of the new regulation. The number of requests for access, resulting from the new regulation, may increase substantially, leading to a heavier workload for many of the institution's staff. In this respect, it is very important to get support from the officials dealing with public access. "Transparency training" schemes should be organised for all civil servants dealing with access to documents, providing education about the practical consequences of the regulation, as well as the ideas behind it. This can also lead to a more effective administration of requests and improved protection of the legal rights of the individual.

The European institutions are unfamiliar to most citizens. Therefore it is very important to get support from the officials dealing with public access. The Ombudsman's Code of Good Administrative Behaviour provides comprehensive recommendations to the institutions in this respect.
Conclusions and Proposals

Openness and maximum transparency also in CFSP matters must be the main concern of the proposed Regulation. The right of public access also applies to documents relating to CFSP.

The derogation to the above mentioned general principle provided for in Article 4 in order to limit access to documents where disclosure could significantly undermine the protection of the public interest on defence and international relations should be interpreted in a very restricted way. This derogation is not to be applied to the CFSP issues as a block in any case. Only those documents, whose disclosure could harm military operations, risk human lives or affect vital interest of EU’s international relations (sensitive information concerning relations with third countries, international organisations, negotiations, etc) could be excluded from public access. In that case, the institution refusing public access shall 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 public register of documents kept in each institution should contain reference to all documents held, including classified information. In case of classified documents, the grounds for refusal should be mentioned.

Officials dealing with access to documents should undergo special "Transparency Training", providing for increased understanding of the new regulation. The institutions must also ensure that all officials are able to inform citizens on how and where to request access to documents.

Among the current existing possibilities the most convenient way of a parliamentary scrutiny of the CFSP classified documents excluded from public access could be through the "ad hoc" Standing Delegation for the relations be fore the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy as well as the Plenary Sitting.

Nevertheless, should a similar parliamentary framework were to be established in order to guarantee the parliamentary scrutiny of all classified documents, the best formula could be by the above mentioned Select Committee of 5 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.

AMENDMENTS

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendments by Parliament</th>
</tr>
</thead>
</table>

1/80

8/20
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.

Scope

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

1. This Regulation shall apply to all documents held by the institutions, whether drawn up by them or received from third parties.

Justification:

The words "widest possible" access to documents should be deleted to make sure that there is a presumption for public interest. The limitation of the rights conferred by the Regulation to natural and legal persons residing or registered in the Union restates the problematic formulation in Article 255 which appears to exclude the rest of the world from the beneficiaries, a limitation which seems neither justified nor practical in a globalizing world (paragraph 2). The proposed new paragraph 3 aims at clarifying that the present Regulation deals with public access to documents and, thus, is of no direct impact on the rights of judicial authorities, investigative bodies and Parliaments in exercising their respective statutory tasks.
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.

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

<TitreJust>Justification:</TitreJust>

<AmJust>The right of access to documents should be applicable also for documents from third parties under the existing system. Any exempt third parties under the existing system. Any exemption from this rule should be dealt with under Article 4. The exception regarding documents already published or accessible to the public by other means is could in the reality lead to that a document is not available (the edition might be sold out) and should therefore be deleted. The reference to specific rules is too vague and it is therefore impossible to foresee the consequences of the wording. Existing specific rules should be examined and where justified included in an annex to the regulation.</AmJust>

</Amend><LANG:EN><Amend>(Amendment <NumAm>3</NumAm>)
<TitreAm>Article 2 par. 3 (new)</TitreAm>

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>The Regulation should be without prejudicet to higher standards of access under national legislation. Thus, the scope of national legislation granting access to documents should not be limited by the Regulation.</AmJust>

</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
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 II.

(c) Delete

(d) Delete

(e) Delete

(f) 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>The basic principle of excluding working documents from the scope of application is acceptable but the wording of the Commission text regarding internal working documents is far too vague. It excludes even documents sent from one institution to another or from Member States and that is not acceptable. Any possible exemption should be dealt with under Article 4. The reference to subsidiary bodies and independent regulatory agencies in the definition of institutions is made in order to point out that all entities which exercise functions of the institutions should be expressly listed in an annex.</AmJust>

</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>

The list of exceptions proposed by the Commission would provide a justification for the exclusion of practically any document and the proposal does not distinguish between different kinds of presumptions for confidentiality. The application of an exception should be based on a comparing of the interests involved and not just a blanco exception.

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

No CFSP/ESDP documents should automatically be excluded from public access. Only those containing information that could risk lives, military operations or sensitive information with third countries, international organisations or negociations, can be fully or partly, excluded 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
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-limit shall be treated as a negative response.

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>The The reference to Community languages (application and reply) seems appropriate as it reflects the established Community practice. The insertion of the possibility to make an application by electronic means seems appropriate.

The term repetitive applications is deleted since it is open to various interpretations and may be used against justified information needs of an active citizen. The one-month time-limits for reply limits for reply by the institutions cannot be considered appropriate for a modern and efficient administration. The introduction of coherent internal procedures and, in particular, a comprehensive register of documents by each institution, would significantly reduce the time needed for processing requests. The provision concerning time needed for processing requests. The provision concerning the legal effect of a lack of reply on behalf of the institutions should be deleted, as it should not be foreseen in a regulation as an alternative reaction of an application. The power to presume that an application is withdrawn if the applicant does not react within a set time on a negative reply to a request should be abolished as contrary to the objective of the regulation.</AmJust>

</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.

<TitreJust>Justification:</TitreJust>
See the justification for the previous amendment. A failure to reply should never be treated as a positive decision since that could harm the interests that are protected according to Article 4 of this Regulation.

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

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
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>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>

<Am>The Commission’s proposal is far too vague and could, as it stands, be used even against normal journalistic use of a document for the purpose of informing the public.</Am>

</Am>

</Am>

</Am>

<TitreAm>Article 9</TitreAm>

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
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>The proposal that all institutions should have a register of documents is welcome, whereas the present formulation is far from adequate. Keeping a register of all documents is not only a precondition for a functioning regime for public access to documents, but also indispensable for a functioning regime for public access to documents. Making the register easily available to the public, e.g. through posting it on the internet, ensures that interested parties can be aware of and identify existing documents. A comprehensive register is also essential for institutions in facilitating the processing of requests. All documents should be entered into the register. The public must, obviously, have the right to request for any document, regardless of classification.</AmJust>

<Amp><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>A truly democratic debate cannot develop in the European Union without open institutions. To ensure such a debate is necessary to gain trust and confidence, especially among young people, who are the future of Europe.</AmJust>

<Amp><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.
Cultural and linguistic differences between Member States have to be recognised. Transparency can help to avoid problems arising from these differences.

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.

These rules are directed at a broad public that might be interested in requesting access to documents. It is therefore particularly important that it is clear and easy to understand for all possible users which rights they have and how they could possibly enforce those rights.

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.

Since the Regulation is based on Article 255 of the Treaty the regulation does not apply to other institutions such as the ECB and the EIB established by the Treaty. However it is important to remember that the Court of Justice has stated "that as long as the Community institutions has not adopted general rules on the right of public access, the institutions must take measures as to the processing of such requests by virtue of requests by virtue of their power of internal organs appropriate measures in order to ensure their internal operation in conformity with the interests of good administration".

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

<TitreJust>Justification:</TitreJust>

<AmJust>AA failure to reply should never be treated as a positive decision since that could harm the interests that are protected according Article 4 of this Regulation.</AmJust>

</Amend><LANG:EN><Amend>(Amendment <NumAm>16</NumAm>)</LANG:EN> <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 arising from this Regulation.*

<TitreJust>Justification:</TitreJust>

<AmJust>These rules are directed at a broad public that might be interested in requesting access to documents. It is therefore particularly important that the staff working at the institutions can help the citizens getting access to the documents</AmJust>

</Amend><LANG:EN><Amend>(Amendment <NumAm>17</NumAm>)</LANG:EN> <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.*

<TitreJust>Justification:</TitreJust>

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

(Delete the rest)
This amendment corresponds to Amendment 3 to Article 2 (new).

- OJ C XXXXXX.
- to be drawn up
- to be drawn up