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

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<Date>{10/10/2000}13 October 2000

# <TitreType>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 Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents</Titre>

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

Draftsman: <Depute>Cecilia Malmström</Depute>

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PE <NoPE>294.779</NoPE>



#### <Procedure>PROCEDURE

The The {AFET} ComCommiCommittee 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 meetings of 19 September and 10 October 2000.

At the latter meeting it adopted the amendments below unanimously.

The The following were present for the vote: Elmar The following were present for the vote: Elmar WinterbourneWinterbourne and CatheriWinterbourne and Catherine LWinterbourne and Catherine Lalun RobertRobert Atkins (for SilvioRobert Atkins (for Silvio BerluscRobert Atkins (for Silvio Berlusconi), AndreAndre Brie, María CarrilhoAndre Brie, María Carrilho (for RosAndre Brie, María Carrilho (for I Cohn-Bendit, Cohn-Bendit, Ozan Ceyhun (for ElisaCohn-Bendit, Ozan Ceyhun (for Elisabeth SCohn-E Nicholas Nicholas Duff (for Francesco Rutelli), Olivier Dupuis (for Karel C.C. DillenNicholas Duff (for I GiovanniGiovanni Claudio Fava (for Sami Naïr), Pernille Frahm (for Efstratios Korakas), Michael Gahler, Gahler, Jas Gawronski, VitGahler, Jas Gawronski, Vitalino Gahler, Jas Gawronski, Vitalino Ge HaaHaarder, Haarder, Klaus Hänsch, Magdalene Hoff, Alain Lamassoure, Pedro Marset Campos, LiHaard McAvan, McAvan, Emilio Menéndez del VMcAvan, Emilio Menéndez del Valle, PMcAvan, Emilio M ObiolsObiols i Germa, Arie M. Oostlander, Reino Kalervo PObiols i Germa, Arie M. Oostlander, Reino Ka PoetteringPoettering, Poettering, Jacques F. Poos, Luís Queiró, Mechtild Rothe (for Jan M LennartLennart Sacrédeus (for José Ignacio SalafranLennart Sacrédeus (for José Ignacio Salafranca Sa SSanter), Santer), Jannis Sakellariou, Jürgen Schröder, Ioannis Souladakis, Francesco Enrico SpeSanter), Jannis Sakellariou, Jürgen Schröder, Ioannis Souladakis, Francesco Enrico SpeSanter), Jannis Sakellariou, Jürgen Schröder, Ioannis Souladakis, Francesco Enrico SpeSanter), Jannis Sakellariou, Jürgen Schröder, Ioannis Souladakis, Francesco Enrico SpeSanter), Jannis Sakellariou, Jürgen Schröder, Ioannis Souladakis, Francesco Enrico SpeSanter), Jannis Sakellariou, Jürgen Schröder, Ioannis Souladakis, Francesco Enrico SpeSanter), Jannis Sakellariou, Jürgen Schröder, Ioannis Souladakis, Francesco Enrico SpeSanter), Jannis Sakellariou, Jürgen Schröder, Ioannis Souladakis, Francesco Enrico SpeSanter), Jannis Sakellariou, Jürgen Schröder, Ioannis Souladakis, Francesco Enrico SpeSanter), Januari Schröder, Ioannis Sch UUrsUrsulaUrsula Stenzel, Hannes Swoboda, Freddy Thielemans, Gary Titley, Johan Van Hecke, Geoffrey Van Orden, Matti Wuori, Christos Zacharakis.

#### **SHORT JUSTIFICATION**

#### Introduction

The activities of public life are of concern to all citizens. This iThe activities of public life are of regionregional level, as well as on the national and European levels. Access to documentsr providing providing insight into the work of public insproviding insight into the work of public insufficient society. By democratic society. By ensuring public scrutiny, of public public authorities can be public authorities can be assured. It is only by giving public life, that a free debate can be fuelled and flourish.

ResearchResearch have shown a clear relation betwResearch have shown a clear relation between an I corruption.corruption. The knowledge that documents and correspondence can be checorruption. The knowledge offofficial officials officials and politicians from abusing their power and influence, and thus contributes decreased corruptdecreased corruption and mismanagement. Transparency in the public considered aconsidered as a necessary considered as a necessary means to guarantee rule of law, e also on the European level.

IncreaIncreasedIncreased coIncreased competencies and a new role for the European Union has increased principal in the European integration process during the past decade. The recent development in the European integration against the EU administration, where many institutions lack comprehensive comprehensive rules on access to documentscomprehen transparency. Theransparency. The transparency. There is a need for a regulation providing concessances to documents, making openness the access to documents, making openness the generaccess regulation regulation will also play an important role in the current reform regulation will also administration, bringing it closer to its citizens.

#### The legal base

The The Amsterdam TreThe Amsterdam Treaty has first of all amended the second paragraph of toto point out that Union dto point out that Union decisions must be taken not only as closely a butbut but also as openly as possible. Furthermore, a new Article 255 has been added to a new Article 255 establishing stablishing the right of access of Union citizens andestablishing the right of access of Union it, it, to EP, Council and Commission documents. It is up to the Council t. It is up to the Council periodperiod of two years and in codecision with the ggroundsgrounds of public or private interest governing this right of access, whilst each Institugrounds of puestablishestablish in its own rules of procedure specific provise ToTo this respect, a Declaration to the Final Act on Article 2To this respect, a Declaration to the Final Ac StatesStates to request the CommissioStates to request the CommissionStates to request

The The introduction of transparency and openness in the introduction of transparency and openness principles of the European Union, as well as the inclusion in the Treaty of the principle of accessaccess to the Institutions' documents undoubtedaccess openness. It is also a step in the right direction that the toto establish the general principles of and limits on thito establish the general principles of and limits on thito establish the general principles of and limits on the right direction that the

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regrettableregrettable that the implementing measures are left to the rules of procedure of the Institutions, something which the EP explicitly opposes.

ItIt is very iIt is very important that the new regulation will be applied by all European institutions alt is mattermatter of good administration, ematter of good administration, even thoumatter of good administration covcovercover the Commission, Council and Parliament. In order to ensure the right of cover the Condocuments held by adocuments held by all Commundocuments held by all Community institution proposal for an additional regulation, based on article 308 TEU.

# The Commission's Proposal

FollowingFollowing the Commission's proposalFollowing the Commission's proposal, the Reguthe Regute European ParlEuropean Parlieuropean Parlie

The The term "document" is defined as any form of content irrespective of the media irrespective of the media is carried. It will cover only administrative documents will cover only administrative documents, i.e., fallsfalls within the institution's remit, excluding documents expressing individual opinions or reflected reflecting free and frank discussions or the provision of advice as part of intereflections consultations and deliberations, aconsultations and deliberations, as we consultations and deliberations are considered the equivalent of telephone conversations.

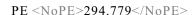
Since Since Since the main tasSince the main task of the Committee on Foreign Affairs is to concentrate on procuments related to the Common Foreign and Security Policy, reactions to the proposal are described in the justifications of the proposed amendments.

## Scope of regulation within the CSFP field

Articles Articles 28(1) of the Treaty on European Union expressly provide that the right of Articles 28(1) of the applies applies to documents relating to documents relating to the commoapplies to documents then, then, in the case T-14/98 then, in the case T-14/98 Hautala vs. Council, justifirst instance accepted that documents related to security and foreign affairs issues first instance acceptunder the general scope under the general scope of the access rules and were interest ground.

The The decision taken by the Council on 14 August The decision taken by the Council on 14 August 2000 the the 1993 decision othe 1993 decision on public access, is thus unacceptable. The European Pa on EU external action of 6 September 2000 deplores this decision.

The The Commission's propoThe Commission's proposal The Commission's proposal includes a num documents documents based on a "harm test". This means that access to documedocuments based on a





unlessunless disclosure might seriously ham certain specific interestunless disclosure might seriously had ArticleArticle 4. As far as CFSP is concernArticle 4. As far as CFSP is concerned, tArticle 4. As far as accessaccess to documents waccess to documents where access to documents where disclosure could serious interestinterest and interest and in parinterest and in particular defence and international relations, as a requested requested by the third party that supplied the documrequested by the third party that supplied the the legislation of the Member State.

AllAll national legislatAll national legislation in the All national legislation in the field apply limitations on and and seand security policy. This kind of restrictions are necessary also in terms of the Euro SecuritySecurity and Defence Policy, and should be laid down as clear and detailed Security and Defence Policy principle of public acceptinciple of public access. By allowing institutions to grogroundsgrounds of grounds of defence and military matters or vital interests relating to the EU's interestations, relations, the necessary confidentiality, as that requested by NATO, can be ensured. Contrarelation to the recent deto the recent decision taken by the Council, this exception would allow access relatedrelated to non-military crisis management. All requests for access to related to non-military crisis managements of the document's classification, should be handled case-by-case.

Unfortunately, Unfortunately, the Commission's the Commission's proposalthe Commission's proposal does not CouncilCouncil has recently and unilaterally reacting by producing a fiCouncil has recently and unilateral GeneralGeneral of the Council/ High Representative for the CFSP of 27 July 2000 on measures for thethe protection of classified informathe protection of classified information applithe protection of classified sesecondsecond Council Decision on public access to Council documents was also issued of August. August. It is true that theses two Decisions refer to the Council's Rules of Procedure. Nevertheless, Nevertheless, it is obvious that these two extemporary Decisions neither could thNevertheless, thethe provithe provisions of Article 255 TEC -implying codecision- nor could them unilaterally and "ex ante" affect the scope of the forthcomingante" affect the scope of the forthcoming Regulaante" affect the toto find as soon as possible a negotiated solution with interinstitutional dialogue which tainterinstitutional dialogue 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 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 Foreigh Committee on Foreign Affairs The Committee Orbital Affairs The Committee on Foreign Affairs The Committee Orbital Affairs The Committee
Policy as a whole;
The Enlarged Bureau of this Committee;
ThTheThe "ad hThe "ad hoc" Standing Delegation for the relations with the NATO-Parliament
Assembly actually being setting up wAssembly actually being setting up withiAssembly
Rights, Common Security and Defence Policy.
AA Selected Committee of 5 up to 7 EP MembA Selected Committee of 5 up to 7 EP Members
(namely(namely AFET, LIBE and CONST). Alternatively, the leaders of the (namely AFET, LIBE
could form this committee.

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#### Registers

The 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.

AllAll documents held by an institution should be included in the register. This aAll documents held by a classified documents, to which classified documents, to which access as public public register coa public register covering all documents, citizens can get a clear picture of activities, despite the fact that not all documents are disclosed.

#### Administration of requests

RequestsRequests for documents should be handled speedily by the institutiRequests for documents should twotwo weeks. For all negative replies to requests, the institution mustwo weeks. For all negative replies to off access. The citizen should also be informed on hof access decision and other remedies available.

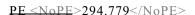
The The institutions need to make further preparations for the implemThe institutions need to make regulation. The number of requests for access, resultingregulation. The number of requests increase substantially, no doubt leading to a heavier workload for many of increase substantially staff.staff. In this respect, it is very important to get support for the principle of public access amongamong the officials dealing with public access. "Transparency tamong the officials dealing with proganisedorganised 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 leathe practication of requests and impto a more effective administration of requests and the individual. Building new burte avoided to the greatest possible extent.

The European institutions are unfamiliar to most The European institutions are unfamiliar to most c officialsofficials are service-minded officials are service-minded and encoraccessaccess to documents can be made. The Ombudsman'saccess to documents can be made. The Behaviour provides comprehensive recommendations to the institutions in this respect.

# **Conclusions and Proposals**

OpennessOpenness and maximum transparency alsoOpenness and maximum transparency also in CFSP matt mainmain concern of the proposed Regulation. The rigmain concern of the proposed Regulation. documents relating to CFSP.

The The derogation to the aThe derogation to the above mentioned general principle provided for limitlimit access to documents where disclosure coulimit access to documents where disclosure could significantly the public interest on defence and international relations should be in the public interest on defence restricted restricted way. This derogation is not to be are stricted way. Only Only those documents, whose disconly those documents, whose disclosure coOnly those documents, affect affect vital interest of EU's international affect vital interest of EU's international relational organic pupulic public acceptable access. In that case, the institution refusing to grant access to the document required.



shallshall state the grounds for its refusal, provide individual proof and inform the applicanshall state remedies open to him. Each application should be handled case by case.

The The public register of documents kept in each institution should contain references to all documents documents held, including classified information. In case of classifidocuments held, including grounds for refusal should be mentioned.

OfficialsOfficials dealing with access to documents should undergo special "TranOfficials dealing with acceptoriding 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.

AmongAmong the current existing possibilities the most convenient way of assuring the necessary parliamentary scrutinyparliamentary scrutiny of the CFSP classified documentary bebe through the "ad hoc" Standing Delegation for the relations with these through the "ad hoc" Standing AssemblyAssembly directly answerable befAssembly directly answerable Common Security and Defence Policy as well as the Plenary Sitting.

Nevertheless, should a similar parliamentary framework were to be establish Nevertheless, should a sim guaranteguarantee the parliamentary scrutiny of all classified documents excluded from public acceptate the best formula could be by the above mentioned Select Committee of the most concerned Committees, or the leaders of the political groups. Thof the most concerned 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 <sup>1</sup>		Amendments by Parliament
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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>

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<AmJust>AA truly democratic debate cannot develop in the EuropeanA truly democratic debate cannot institutioninstitutions.institutions. To ensure such a debate is nevertheless important in order confidence, especially among young people, who are the future of Europe.

</Amend><LANG:EN><Amend>(Amendment <NumAm>2</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 are directed at a broad public that might be interested in requesting accessaccess to documents. It is thaccess to documents. It is therefore understaunderstandanderstandanderstand for all possible users which rights they have and how they could p those rights.

10. 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.

10. 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 neA failure to reply should never A failure to reply should never be harm the interests that are protected according Article 4 of this Regulation.

</Amend><LANG:EN><Amend>(Amendment <NumAm>4</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 Regulation.

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## <TitreJust>Justification:</TitreJust>

<a href="#"><AmJust>TheseThese rules are directed at a broad public that might be interested in requesting accessaccess to documents. It is therefore particularly important that the stafaccess to documents. It institutions can help the citizens getting access to the documents.

</*AmJust*>

# <Amend>(Amendment < NumAm>5</NumAm>) Recital 12

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

12. This Regulation does not amend existing national legislation on access to documents. Consistent with the principle of loyalty which governs relations between the Community institutions and the Member States in Article 10 of the EC Treaty and with Declaration 35 attached to the Treaty on European Union the institutions shall take account of the opinion of the author before taking the final decision on the disclosure of documents. At the same time the institutions concerned should respect the right of Member States to grant access in accordance with their national legislation.

# Justification:

The regulation should be without prejudice 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.

- (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
- (c) Delete
- (d) **Delete**

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(and in particular the Permanent Representatives Committee and the working parties), the departments and the committees set up by the Treaty or by the legislator to assist the Council;

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

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

(e) **Delete** 

Delete

<TitreJust>Justification:</TitreJust>

<AmJust>AllAll three institutions aAll three institutions and tAll three institutions and their inte descriptive definition is necessary.

</Amend><LANG:EN><Amend>(Amendment <NumAm>7</NumAm>)
<TitreAm>Article 5.5 (new)</TitreAm>

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>* 

The The introduction of coherent internal prThe introduction of coherent internal procThe introduction registerregister of documents by each insregister of documents by each processing requests. </AmJust>

</Amend><LANG:EN><Amend>(Amendment <NumAm>8</NumAm>)
<TitreAm>Article 6</TitreAm>

PE <NoPE>294.779</NoPE>

12/15

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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>TheThe one-month time-limThe one-month time-limit forThe one-month time-limit for reply appropriate appropriate for a modern and efficient administration. The introduction of coherent internal procedures procedures and, in particular, of a comprehensive register of documeprocedures and, in particular wouldwould siwould significantly reduce the time needed for processing requests. The provision concerning thethe lethe legal effect othe legal effect of a lack of reply on behalf of the institutions should be deleted, as not not be foreseen in a regulation as an alternative reaction of not be foreseen in a regulation as an alternative reaction of not be foreseen in a regulation as an alternative reaction is withdrawn if the applicant an anegative reply to a request should be about regulation.
AmJust> A failure to reply should never be treated as a positive decision since that that could harm that could harm the interests that are protected according to Regulation.

</Amend></LANG:EN><LANG:EN><Amend>(Amendment 9)
Article 7.3 (new)

3. Parliamentary scrutiny of all documents excluded from public access should be assured by regularly informing the Committees involved in closed session, the enlarged bureau of those committees, or a Select Committee according to the classification and the topic of the documents concerned.

# Justification:

The Parliamentary scrutiny should be assured at different levels according to the nature of the document and its classification.

<Amend>(Amendment <NumAm>10</NumAm>)
Article 7.4 (new)

4. An edited version of the requested document shall be provided if part of the document is covered by one of the exceptions in article 4.1. If a requested document is covered by article 4.2 a summary of its factual content shall in any case be provided.

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

In cases where it is impossible to remove traces to individual officials by editing a document, the institution shall at least provide a summary of its factual content.

- 8. 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.
- 8. 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 The Commission The Commission s proposal is far too vague and could, as it stands, be againstagainst normal journalistic use of a depublic.
/AmJust>

# <Amend>(Amendment <NumAm>12</NumAm>) Article 9

- 9. Each institution shall take the requisite measures to inform the public of the rights they enjoy as a result of this Regulation. Furthermore, to make it easier for citizens to exercise their rights arising from this Regulation, each institution shall provide access to a register of documents.
- 9. Each institution shall keep a register of all documents drawn up, received and sent by the institution. Documents shall be entered into the register at the time of their completion or reception. The register shall be easily accessible to all citizens and specify any classification of confidentiality of each document.

<TitreJust>Justification:</TitreJust>

It is essential to regulate in a clear manner the time at which a document is entered into the register.

</*Amend>* 

<sup>o</sup> OJ C 177, 27.06.2000, p. 70