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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</Date>

## <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))</DocRef>

Draftsman: <Depute>Cecilia Malmström</Depute>

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PE <NoPE>294.779</NoPE>

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## <Procedure>PROCEDURE

TheThe {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.

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

It is very important that the new regulation will be applied by all European institutions in a matter of good administration, even though it covers the Commission, Council and Parliament. In order to ensure the right of access to documents held by all Community institutions, a proposal for an additional regulation, based on article 308 TEU.

### **The Commission's Proposal**

Following the Commission's proposal, the Regulation will be applied by all European institutions in a matter of good administration, even though it covers the Commission, Council and Parliament. *The law will widen the scope of access to documents held by the three institutions.* This widening in the scope is a major step forward compared to the current situation. However, it is understood that access to a document will not be granted if the document is covered by one of the exceptions in Article 4. Where there is some doubt on Article 4. Where there is some doubt on whether to allow access to the document or not. A decision on whether to allow access to the document will be limited to those sent to the institution after the date of entry into application of this Regulation.

*The term "document" is defined as any form of content irrespective of the medium in which it is carried. It will cover only administrative documents, i.e. , which falls within the institution's remit, excluding documents expressing individual opinions or reflecting free and frank discussions or the provision of advice as part of internal consultations and deliberations, as well as consultations and deliberations which can be considered the equivalent of telephone conversations.*

Since the main task of the Committee on Foreign Affairs is to concentrate on documents 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 28(1) of the Treaty on European Union expressly provide that the right of access applies to documents relating to the common foreign and security policy. Then, in the case T-14/98 Hautala vs. Council, the first instance accepted that documents related to security and foreign affairs issues under the general scope of the access rules and were of interest ground.

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

The Commission's proposal includes a number of documents based on a "harm test". This means that access to documents based on a



## 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. This also applies to classified documents, to which access to a 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

Requests for documents should be handled speedily by the institution. Requests for documents should be handled within two weeks. For all negative replies to requests, the institution must inform the citizen of access. The citizen should also be informed on the decision and other remedies available.

The institutions need to make further preparations for the implementation of the regulation. The number of requests for access, resulting from the regulation, will increase substantially, no doubt leading to a heavier workload for many of the staff. In this respect, it is very important to get support for the principle of public access among the officials dealing with public access. Transparency among the officials dealing with public access 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 improve the individual. Building new bureaucratic procedures should be avoided to the greatest possible extent.

The European institutions are unfamiliar to most officials. Officials are service-minded and encourage access to documents can be made. The Ombudsman's Behaviour provides comprehensive recommendations to the institutions in this respect.

## Conclusions and Proposals

Openness and maximum transparency also in CFSP matters are the main concern of the proposed Regulation. The main concern of the proposed Regulation is documents relating to CFSP.

The derogation to the above mentioned general principle provided for in the Regulation is to limit access to documents where disclosure could significantly harm the public interest on defence and international relations should be in a restricted way. This derogation is not to be applied to documents whose disclosure could affect vital interest of EU's international relations with third countries, international organisations or public access. In that case, the institution refusing to grant access to the document requested



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

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

Officials dealing with access to documents should undergo special 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 assuring the necessary parliamentary scrutiny of the CFSP classified documents should be through the "ad hoc" Standing Delegation for the relations with the European Parliament Assembly directly answerable to the Common Security and Defence Policy as well as the Plenary Sitting.

Nevertheless, should a similar parliamentary framework were to be established, should a similar guarantee the parliamentary scrutiny of all classified documents excluded from public access, the best formula could be by the above mentioned Select Committee of the most concerned Committees, or the leaders of the political groups. The most concerned Committee would be then directly answerable to the Plenary Sitting.

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## 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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</Amend><LANG:EN><Amend>(Amendment <NumAm>1</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>

*AA truly democratic debate cannot develop in the European institutions. To ensure such a debate is nevertheless important in order to build confidence, especially among young people, who are the future of Europe.*

(Amendment 2)  
Recital 3 a (new)

***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.***

*Justification:*

*These rules are directed at a broad public that might be interested in requesting access to documents. It is therefore essential to ensure that the rules are understood for all possible users which rights they have and how they could exercise those rights.*

(Amendment 3)  
Recital 10

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***

*Justification:*

*AA failure to reply should never harm the interests that are protected according Article 4 of this Regulation.*

(Amendment 4)  
Recital 11 a (new)

***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>TheseThese rules are directed at a broad public that might be interested in requesting access to documents. It is therefore particularly important that the staff access 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.

</Amend></Amend><LANG:EN><Amend>(Amendment <NumAm>6</NumAm>)  
<TitreAm>Article 3</TitreAm>

(c) **"European Parliament" shall mean Parliament bodies (and in particular the Bureau and the Conference of Presidents), Parliamentary Committees, the political groups and departments;**

(c) **Delete**

(d) **"Council" shall mean the various configurations and bodies of the Council**

(d) **Delete**

*(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) Delete*

*(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;*

*Delete*

*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.*

*<TitreJust>Justification:</TitreJust>*

*<AmJust>All three institutions and their inter-descriptive definition is necessary.</AmJust>*

*</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 introduction of coherent internal processing register of documents by each institution.*

*</Amend><LANG:EN><Amend>(Amendment <NumAm>8</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>The one-month time-limit for reply is appropriate for a modern and efficient administration. The introduction of coherent internal procedures and, in particular, of a comprehensive register of documents would significantly reduce the 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 not be foreseen in a regulation as an alternative reaction of not be foreseen in a regulation as an alternative reaction. A failure to reply should never be treated as a positive decision since that could harm the interests that are protected according to Regulation.</AmJust>

</Amend></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.*

</Amend><LANG:EN><Amend>(Amendment <NumAm>11</NumAm>)  
<TitreAm>Article 8</TitreAm>

**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 journaliagainst normal journalistiagainst normal journalistic use of a do public.</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>0</sup> OJ C 177, 27.06.2000, p. 70