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<Commission>{CONT}Committee on Budgetary Control</Commission>

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<Date>{07-09-2000}7 September 2000</Date>

## <TitreType>DRAFT OPINION</TitreType>

<CommissionResp>of the {CONT}Committee on Budgetary  
Control</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 final/2 C5-0057/2000  
2000/0032(COD))</DocRef>

Draftsman: <Depute>Diemut R. Theato</Depute>

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## <Procedure>PROCEDURE

The {CONT} Committee on Budgetary Control appointed Diemut R. Theato draftsman at its meeting of {01.09.2000} 1 September 2000.

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

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 ... .

<AmJust>The subject of this opinion is a Commission proposal for a regulation<sup>1</sup> based on Article 255 of the EC Treaty. The article in question, which was introduced by the Amsterdam Treaty, guarantees citizens of the Union the right of access to European Parliament, Council and Commission documents. It requires the institutions, using the codecision procedure, to lay down general principles and limits on grounds of public or private interest governing this right of access.

Your draftsman wishes to emphasise in this connection that the principle of openness expressly enshrined in this way in Article 255 as well as in other provisions of the Treaties is the essential precondition for democratic control and participation of citizens in the decision-making process. It enables the administration to enjoy greater legitimacy and to be more effective and closer to the citizen, and plays a vital part in protecting against the arbitrary use of and the abuse of power.

Your draftsman clearly recognises that it is necessary for certain documents to remain confidential and that access by the public to such documents may consequently not be permitted. However, there are already rules governing this in the relevant Community legislation. We would refer in this connection only to two particularly sensitive areas: the OLAF Regulation provides for the confidential treatment of reports of the Anti-Fraud Office, and the Staff Regulations of EU officials guarantee the confidentiality of disciplinary proceedings.

#### **General list of exceptions unnecessary**

It therefore seems inappropriate, in addition to the existing provisions, to lay down a whole list of general exceptions, which, moreover, under the Commission proposal, would allow a great deal of room for discretion. This would inevitably lead to uncertainty and disputes.

Your draftsman therefore proposes a fundamentally different approach. In order to avoid endless discussion on the aforementioned list of exceptions, the regulation should refer to the existing specific exceptions. This would establish the principle that the public should have access to all documents that are not covered by specific exceptions<sup>2</sup>.

Derogations from this principle should be provided for in only two cases:

- (a) internal documents in which the author expresses an individual opinion or which reflect free and frank discussions and provision of advice as part of internal consultations or deliberations should in general not be made available to the public. The aim is to ensure that the institutions have space for discussion and the exchange of views.
- (b) documents which have been forwarded to the institutions on condition that their confidentiality is protected, and without there being a legal requirement for the documents to be forwarded, should also not be made available to the public. Such a

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<sup>1</sup> COM(2000) 30 final/2 of 21 February 2000

<sup>2</sup> For information purposes, a list of such exceptions and a clear explanation of the exceptions would, of course, have to be provided.

derogation is in accordance with Declaration No 35 annexed to the Final Act of the Amsterdam Treaty, in which the Intergovernmental Conference agreed that Article 255 allows a Member State to request the Commission or the Council not to communicate to third parties a document originating from that State without its prior agreement.

### **Providing citizens with effective assistance in exercising their rights**

For the rest, the amendments proposed by your draftsman are intended to make it easier for citizens of the Union to exercise their rights in practice. The fact is that the majority of those concerned find obtaining access to EU institutions and documents a relatively difficult process.

Particular efforts consequently need to be made to remove both supposed and actual obstacles. It is therefore proposed that each institution should establish a **contact point**, giving the names of persons to contact who can advise citizens and provide explanatory help.

It is also important to provide expressly that applications for documents may be made in **any of the 11 official languages** and that the institutions' replies must be given in the language chosen by the applicant.

A mechanism for resolving disputes should also be provided at the outset, in order to avoid as far as possible the Ombudsman or the courts being asked to deal with complaints concerning applications that have been rejected.

To that end, it is proposed that Parliament, the Council and the Commission jointly establish a **conciliation body**, which will be informed without delay of all applications that have been rejected and which will offer applicants assistance and advice in drawing up a confirmatory application.

The conciliation body should be composed of five independent persons with proven experience in the media, the law or non-governmental organisations. Its members should be appointed by common accord of the European Parliament, the Council and the Commission.

The establishment of such a conciliation body would give a clear signal that the institutions are willing to subject their negative replies to independent and critical scrutiny.

## AMENDMENTS

The {CONT} Committee on Budgetary Control 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>(Amendment <NumAm>1</NumAm>)  
<TitreAm>Recital 2</TitreAm>

(2) Openness *enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable vis-à-vis the citizen in a democratic system.*

(2) Openness *is the essential precondition for democratic control and participation of citizens in the decision-making process. It enables the administration to enjoy greater legitimacy and to be more effective and closer to the citizen, and plays a vital part in protecting against the arbitrary use of and the abuse of power and against corruption and fraud.*

<TitreJust>Justification:</TitreJust>

<AmJust>The fundamental importance of openness for democracy needs to be emphasised more clearly.</AmJust>

</Amend><LANG:EN><Amend>(Amendment <NumAm>2</NumAm>)  
<TitreAm>Recital 9</TitreAm>

(9) The public interest and certain individual interests should be protected by way of a system of exceptions. *Examples of these interests should be given in each case so that the system may be as transparent as possible.* The institutions should also be entitled to protect their internal documents which express individual opinions or reflect free and frank discussions and provision of advice as part of internal consultations and deliberations.

(9) The public interest and certain individual interests should be protected by way of a system of exceptions.  
*Access to documents may therefore be restricted or refused where the protection of confidentiality is laid down in provisions of the Treaties or in legislation based on the Treaties.*

The institutions should also be entitled to protect their internal documents which express individual opinions or reflect free and frank discussions and provision of

advice as part of internal consultations and deliberations.

<TitreJust>Justification:</TitreJust>

<AmJust>Conditions and rules governing the confidential treatment of documents have already been laid down in the relevant individual provisions of Community law. This new regulation should therefore refer to these, but should not attempt to define further exceptions.</AmJust>

</Amend><LANG:EN><Amend>(Amendment <NumAm>3</NumAm>)  
<TitreAm>Recital 10</TitreAm>

(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.*

(10) In order to ensure that the right of access is fully *exercised, the institutions should automatically refer applications for access to documents rejected by them to a conciliation body. This independent body should examine negative replies and offer applicants assistance in drawing up a confirmatory application. This shall be without prejudice to the possibility of making a complaint to the Ombudsman or bringing court proceedings following rejection of a confirmatory application.*

<TitreJust>Justification:</TitreJust>

<AmJust>Through a quasi-automatic conciliation mechanism, citizens should be given the opportunity to fully exercise their rights arising from the regulation without having to resort immediately to complaints or court proceedings.</AmJust>

</Amend><LANG:EN><Amend>(Amendment <NumAm>4</NumAm>)  
<TitreAm>Recital 11</TitreAm>

(11) Each institution should take the measures necessary to inform the public about the new provisions in force; furthermore, to make it easier for citizens to exercise their rights arising from this Regulation, each institution should provide access to a register of documents.

(11) Each institution should take the measures necessary to inform the public about the new provisions in force; furthermore, to make it easier for citizens to exercise their rights arising from this Regulation, each institution should provide access to a register of documents *and establish a contact point.*

<TitreJust>Justification:</TitreJust>

*<AmJust>The institutions should not only provide a register, but also give names of contacts who can advise citizens on exercising their rights and provide explanatory help. </AmJust>*

*</Amend><LANG:EN><Amend>(Amendment <NumAm>5</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*

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 ***of*** access to the documents of the institutions within the meaning of this Regulation, without having to cite reasons for their interest, ***except documents***

***(a) in respect of which the protection of confidentiality is laid down in the relevant legal provisions;***

***(b) which have been forwarded to the institutions on condition that their confidentiality is protected, and without there being a legal requirement for the documents to be forwarded.***

*<TitreJust>Justification:</TitreJust>*

*<AmJust>See amendment 2.</AmJust>*

*</Amend><LANG:EN><Amend>(Amendment <NumAm>6</NumAm>)  
<TitreAm>Article 4</TitreAm>*

#### *Exceptions*

***The institutions shall 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,***

#### *Conciliation body*

***1. The conciliation body shall assist applicants in exercising their rights arising from this regulation. To that end, it may request the institutions to provide the necessary information and may make recommendations.***

***2. It shall be composed of five independent outside persons with proven experience in the fields of the media or the law or in non-governmental organisations.***



*\_ 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 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.*

*3. The term of office of members shall be three years. They shall be appointed by common accord of the European Parliament, the Council and the Commission. Their appointment shall be renewable once.*

*4. The conciliation body shall appoint its chairman. It shall adopt its own rules of procedure. It shall take its decisions by a majority of its members. The secretariat of the conciliation body shall be provided by the Secretariat of the European Parliament. In carrying out their duties, the staff of the secretariat shall be subject to instructions only from the chairman of the conciliation body.*

*5. The conciliation body shall adopt at least one report on its activities per year which it shall send to the institutions.*

*<TitreJust>Justification:</TitreJust>*

*<AmJust>See amendment 3.</AmJust>*

*</Amend><LANG:EN><Amend>(Amendment <NumAm>7</NumAm>)  
<TitreAm>Article 5</TitreAm>*

*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*

*Processing of initial applications*

*1. All applications for access to a document shall be made in writing **in one of the official languages of the Community** in a sufficiently precise manner to enable the institution to identify*

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.***

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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. ***The reply shall be given in the language in which the application was made.***

3. Where the institution gives a negative reply to the applicant, it shall ***forward the dossier to the conciliation body without delay and at the same time*** inform ***the applicant*** that, within one month of receiving the reply, he is entitled to make a confirmatory application ***to*** the institution ***and that he may call upon the assistance of the conciliation body in this connection.***

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.

<TitreJust>Justification:</TitreJust>

<AmJust>Applicants should expressly be guaranteed the right to apply to the institutions in any of the 11 official languages and also to receive a reply in the language used by them. Rules also need to be laid down for bringing in the conciliation body.</AmJust>

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

*Information and registers*

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.

*Information and registers*

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 **establish a contact point and** provide access to a register of documents.

<TitreJust>Justification:</TitreJust>

<AmJust>See amendment 4.</AmJust>

</Amend>

<sup>0</sup> O J C .