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THE EUROPEAN UNION**

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NOTE

From : General Secretariat
To : Working Party on Information
Subject : Proposal for a Regulation of the European Parliament and of the Council
regarding public access to European Parliament, Council and Commission
documents (recast)

Following the meeting of the Working Party on 3 June 2009, delegations will find attached a proposal made by the Netherlands concerning Article 5, point 2 of the Commissions proposal.

Proposal by the Netherlands

Article 5.2

Where an application concerns a document originating from a Member State, other than documents transmitted in the framework of procedures leading to a legislative act or a non-legislative act of general application, the authorities of that Member State shall be consulted. The institution holding the document shall disclose it unless the Member State gives reasons for withholding it, based on the exceptions referred to in Article 4 **or based on provisions in its own legislation insofar as these provisions regard a public interest deserving protection on the basis of Article 4 (1).** ~~or on specific provisions in its own legislation preventing disclosure of the document concerned.~~ The institution shall appreciate the adequacy of reasons given by the Member State ~~insofar as they are based on exceptions laid down in this Regulation.~~

Justification

Documents are to be disclosed unless the information is covered by an exception in Article 4 or an exception based on provisions in national legislation, insofar as these provisions regard a public interest worthy of protection on the basis of the exceptions in Article 4(1). Amendment clarifies the text (cf. IFAW-judgment).