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

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<Date>{14-09-2000}14 September 2000</Date>

<TitreType>DRAFT 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 Council decision on right of access to EP, 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

The {AFET} Committee 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 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 the case at the national and European levels. Access to the work of public institutions, is one of the cornerstones of ensuring public scrutiny, openness and transparency in the work of the public authorities. It is only by giving citizens the right of participation in public life that it can be fuelled and flourish.

Research have shown a clear relation between an open access to documents and correspondence can be checked can prevent officials and politicians from abusing their power. This has led to a decreased corruption and mismanagement considered as a necessary means to guarantee rule of law 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 development of critical voices against the EU administration, where many institutions lack comprehensive rules on access to documents, as well as a working culture signified the need for a regulation providing clear and open access to documents and secrecy 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 but 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 to documents of the EP, Council and Commission documents.* <DataOfDocument>

<FdR>332457</FdR>

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COMMENT</DataOfDocument>It</DataOfDocument>It is up to th</DataOfDocument>It is up to the </> yearsyears and in years and in codecisionyears and in codecision with the EP, the general principles and li privateprivate interest governing this right of access, whilst each Institutionprivate interest governing this rulesrules of procedure specific provisions regarding access to its documents. To this reserules of proc DeclarationDeclaration to the Final Act on Article 255 of the TECDeclaration to the Final Act on Article thethe Commission or the Councilthe Commission or the Council not tthe Commission or the Council r from that state without its prior agreement.

TheThe introduction of transparency and openness in the procedures of theThe introduction of tran principlesprinciples of the European Union, as wellprinciples of the European Union, as well principles accessaccess to the Institutions' documents undoubtedly constitute impaccess to the Institutions' docume openness.openness. It is also a step in the right direction that the Council, in codecision with the EP, is toto establish the general principles of and limits on thito establish the general principles of and limit regrettableregrettable that the regrettable that the iregrettable that the implementing measures are Institutions, something which the EP explicitly opposes.

ItIt is very important that the new regulation wIt is very important that the new regulation will be appli mmattermatter of matter of good administration, even though article 255 TEC only provides a legal ba covercover the Commission, Council and Parliament. In order to ensure cover the Commission, Coun documentsdocuments held bdocuments held by all Community institutions, the Commission sho proposal for an additional regulation, based on article 308 TEU.

The Commission's Proposal

FollowingFollowing the CommissiFollowing the Commission's proposFollowing the Commission's prop EuropeanEuropean Parliament, the Council and the Commission. *The legislation wilThe legislation documentsdocuments held by the thdocuments held by the three institutiondocuments held by the three ins* majormajor step forward major step forward compared tmajor step forward compared to the current syste byby the institutions. However, it is understood that access to a do by the institutions. However, it is under partyparty will not be granted if the document party will not be granted if the document is party will not ArticleArticle 4. Where thereArticle 4. Where there is somArticle 4. Where there is some doubt on thi documentdocument first, although it reserves the right, if no reply is forthcoming, to take the final decisiondecision on whether to allow access to the document or not. Access to documents from third partiesparties will be limited to those sent to the institution afparties will be limited to those sent to the ins this Regulation.

TheThe term "document" is defined as any form of content irrespective o irrespective of the irrespective of t isis carried. It will cover only administrative documents, i., i.e. any doc, i.e. any document on a topic w fallsfalls within the institution's remit, excluding documents expressing individual opifalls within the reflectingreflecting free and frank discussionsreflecting free and frank discussions or the preflect consultationsconsultations and deliberations, as wellconsultations and deliberations, as well as iconsultati can be considered the equivalent of telephone conversations.

SinceSince the main task of the Committee on Foreign Affairs is to concentraSince the main task of the Co documentsdocuments related to the Common Fdocuments related to the Common Foreign document reactions to the proposal are described in the justifications of the proposed amendments.

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 Committee on Foreign Affairs, Human Rights, The Committee on Foreign Affairs, Human Rights, and Democracy Policy as a whole;
- The Enlarged Bureau of this Committee;
- The "ad hoc" Standing Delegation for the relations with the European Parliament, actually being set up within the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy.
- A Selected Committee of 5 up to 7 EP Members of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (namely AFET, LIBE and CONSTA) could form this committee.

Registers

The Commission's proposal indicates that 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. Classified documents, to which access may on certain grounds be denied, should also be included in a public register covering all documents, citizens can get a clear view of the activities, despite the fact that not all documents are disclosed.

Administration of requests

Requests for documents should be handled speedily by the institution, not 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 a 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 regulation, will increase substantially, no doubt leading to a significant increase in staff. In this respect, it is very important to get support among the officials dealing with public access. "Transparency training" 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 idea of a more effective administration of requests and improved protection of the individual. Building new bureaucracies only to handle requests should be avoided to the greatest possible extent.

The European institutions are unfamiliar to most citizens. Therefore it is important that officials are service-minded and encouraged to assist citizens in how access to documents can be made. 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 a main concern of the proposed Regulation. The main concern of the documents relating to CFSP.

The derogation to the above mentioned general principle of public access to documents where disclosure could significantly undermine the public interest on defence and international relations in a restricted way. This derogation is not to be applied to those documents, whose disclosure could harm military operations, risk human lives or affect vital interest of EU's international 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 documents held, including classified information. In case of classified documents held, 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 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 parliamentary scrutiny of the CFSP classification should be through the "ad hoc" Standing Delegation for the relations with the Assembly directly answerable before 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 of the most concerned Committees, or the leaders of the political 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 ¹		Amendments by Parliament
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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 I²*

<TitreJust>Justification:</TitreJust>

<AmJust>TheThe right of access to documents should be applicable also for documents from third parties under the existing system. Any exemption regarding documents already published or accessible 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 too vague and it is therefore impossible to foresee the consequences of the word Existing specific rules should be examined and where justified included in an Existing specific rule regulation.</AmJust>

</Amend><LANG:EN><Amend>(Amendment <NumAm>3</NumAm>)</Amend>
<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 prejudice to higher standards of national legislation. national legislation. Thus, the scope of national legislation granted should not be limited by the Regulation.</AmJust>

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

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 document 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 documentis far too vague, It excludes even institutions or Member States and that is not acceptable. Any possible exemptions institutions or Member States should be dealt with under Article 4. The independent regulatory agencies in the definition of independent regulatory agencies in the definition that all entities which exercise functions of the independent regulatory agencies in the definition expressly list them 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>

*<AmJust>TheThe list of exceptions proposed by the CommThe list of exceptions proposed by the Com
forfor the efor the exclusion for the exclusion of practically any document and the proposal does not dist
ddifferentdifferent kinds of presumptions for confidentiality. The application of an exception should
based on a comparing of the interests involved and not just a blanco exception.*

*TheThe exception concerning third party documents would undermine the whole ideaThe exception o
publicpublic access to documents and should therefore be deleted. This does not mepublic access to do
are no legitimated rights of protection but they have to be covered by the other exemptions.*

*NoNo CFSP/ESDP documents should automatically be excluded from public access. Only those
containingcontaining information that could risk lives, milcontaining information that could risk lives, mi
thirdthird countries, internatthird countries, internatiothird countries, international organisations or neg
from public access, after a case by case examination.</AmJust>*

*</Amend><LANG:EN><Amend>(Amendment <NumAm>6</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 details regarding the application. In the event of repetitive applications and/or applications relating to very large documents, the institution concerned shall***

Processing of initial applications

*1. All applications for access to a document shall be made in writing in **one of the languages referred to in Article 314 of the EC-treaty and** a sufficiently precise manner to enable the institution to identify the document. **"in writing" also comprises the processing of an application by electronic means such as fax or e-mail.***

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.

2. Within *two weeks* 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 *give reasons and* inform him that he is entitled to make a confirmatory application asking the institution to reconsider its position.

4. In exceptional cases, the *two-week* time-limit provided for in paragraph 2 may be extended by *two weeks*, provided that the applicant is notified in advance and that detailed reasons are given.

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>TheThe reference to Community languages (appliThe reference to Community languages (applic
as it refleas it reflecas it reflects the established Community practice. The insertion of the possibility to m
application by electronic means seems appropriate.

TheThe term repetitiThe term repetitive applThe term repetitive applications is deleted since it is ope
maymay be used against justified information needs of an active citizen. The one-may be used against ju
limitslimits for reply limits for reply by thlimits for reply by the institutions cannot be considered ap
efficientefficient administration. The introduction of coherent internal procedures and, in particular,
ofof a comprehensive register of documents by each institution, would sigof a comprehensive register of do
timetime needed for processing requests. The provision concerning time needed for processing requests. T
replyreply on behalf of the institutions should be deleted, as it it should not be foreseen in a
regulationregulation as an regulation as an alternative reaction of an application.. The power to pres
applicationapplication is withdrawn if the applicaapplication is withdrawn if the applicant does not reappli
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.

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>SSeeSee the justification for the previous amendment. A failure to reply shouSee the ju
nevernever be treated as a positive decision since that could hanever be treated as a positive decision si
according to Article 4 of this Regulation.</AmJust>

</Amend><LANG:EN><Amend>(Amendment <NumAm>8</NumAm>)
<TitreAm>Article 7</TitreAm>

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

Exercise of the right to access

1. The applicant shall have access to documents either by **choosing to consult** them on the spot or by receiving a copy.

The costs **which** may be charged to the applicant **should be based on the actual cost of making a copy and free of charge when the applicant is consulting documents on the spot**

2. Documents shall be supplied in the form requested by the applicant if they are available in that form, e.g. electronically or in an alternative format, (such as Braille, large print or tape).

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>

<AmJust>The first two amendments aim at ensuring that the applicant may choose in which way he would like to have the information and that the costs for way he would like to have the information are discouraged or unduly burden applicants and to make sure that applicants who discourage or unduly burden documents on the spot can do so free of charge. The third amendment suggests that documents shall be made available in formats accessible to visually handicapped.</AmJust>

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

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>

<AmJust>The Commission's proposal is far too vague and could, as if against normal journalistic use of a document for the public.</AmJust>

</Amend><LANG:EN><Amend>(Amendment <NumAm>10</NumAm>)
<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 not only a precondition for a functioning regime for public access to documents to the public, e.g. through posting it to the public, e.g. through posting it on the aware of and identify existing documents in institutions in facilitating the processing of requests. All documents should be entered into the register. The public must document, regardless of classification.</AmJust>

</Amend><LANG:EN><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 institutions. To ensure such a debate is necessary to ensure confidence, especially among young people, who are the future of Europe.</AmJust>

</Amend><LANG:EN><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

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

⁰ OJ C XXXXXX.

⁰ to be drawn up

⁰ to be drawn up