

**Proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents**

(2000/C 177 E/10)

COM(2000) 30 final — 2000/0032(COD)

*(Submitted by the Commission on 28 January 2000)*

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

confirmed by Declaration No 41 attached to the Final Act of the Treaty of Amsterdam.

Having regard to the Treaty establishing the European Community, and in particular Article 255(2) thereof,

(6) Under Articles 28(1) and 41(1) of the Treaty on European Union, the right of access also applies to documents relating to the common foreign and security policy and to police and judicial cooperation in criminal matters.

Having regard to the proposal from the Commission,

Acting in accordance with the procedure referred to in Article 251 of the Treaty,

(7) In order to bring about greater openness in the work of the institutions and in line with current national legislation in most of the Member States, access to documents should be extended to include all documents held by the European Parliament, the Council and the Commission.

Whereas:

(1) The second paragraph of Article 1 of the Treaty on European Union, as amended by the Treaty of Amsterdam, enshrines the concept of openness, stating that 'This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen'.

(8) The principles laid down by this Regulation are to be without prejudice to the specific rules applicable to access to documents, in particular those directly concerning persons with a specific interest.

(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.

(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.

(3) The conclusions of the European Councils held at Birmingham, Edinburgh and Copenhagen stressed the need to introduce greater transparency into the work of the Union institutions. Following these conclusions, the institutions launched a series of initiatives aimed at improving the transparency of the decision-making process by targeting information and communication measures more effectively and adopting rules on public access to documents.

(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.

(4) The purpose of this Regulation is to widen access to documents as far as possible, in line with the principle of openness. It puts into practice the right of access to documents and lays down the general principles and limits on such access in accordance with Article 255(2) of the EC Treaty.

(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.

(5) Since the question of access to documents is not covered by provisions of the ECSC and Euratom Treaties, this Regulation will apply to documents concerning the activities covered by those two Treaties. This was

(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.

(13) In accordance with Article 255(3) of the EC Treaty, each institution lays down specific provisions regarding access to its documents in its rules of procedure. Failing such provisions, this Regulation cannot be applicable. This Regulation and the provisions giving effect to it will replace Council Decision 93/731/EC of 20 December 1993 on public access to Council document <sup>(1)</sup> Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents <sup>(2)</sup> and European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents <sup>(3)</sup>,

HAVE ADOPTED THIS REGULATION:

#### Article 1

##### 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.

#### Article 2

##### Scope

1. This Regulation shall apply to all documents held by the institutions, that is to say, documents drawn up by them or received from third parties and in their possession.

Access to documents from third parties 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.

#### Article 3

##### 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, visual or audiovisual recording); only administrative

<sup>(1)</sup> OJ L 340, 31.12.1993, p. 43; Decision as last amended by Decision 96/705/EC, ECSC, Euratom (OJ L 325, 14.12.1996, p. 19).

<sup>(2)</sup> OJ L 46, 18.2.1994, p. 58; Decision as amended by Decision 96/567/EC, ECSC, Euratom (OJ L 247, 28.9.1996, p. 45).

<sup>(3)</sup> OJ L 263, 25.9.1997, p. 27.

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 shall be drawn up as part of the rules giving effect to this Regulation, as provided for in Article 10.

#### Article 4

##### 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,
  - 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.

#### Article 5

##### 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 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.

#### Article 6

##### 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.

#### Article 7

##### 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 document shall be provided if part of the document is covered by any of the exceptions provided for in Article 4.

#### Article 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.

*Article 9***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.

*Article 10***Effect**

Each institution shall adopt in its rules of procedure the provisions required to give effect to this Regulation. Those

provisions shall take effect on ... [three months after the adoption of this Regulation].

*Article 11***Entry into force**

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Communities*. It shall be applicable from ... [three months from the date of adoption of this Regulation].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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