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Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

5 April 2001

PE 294.327/88-110

PROPOSED COMPROMISE AMENDMENTS 88-110 (Rule 69 of the Rules of Procedure)

DRAFT REPORT by Michael Cashman and Hanja Maij-Weggen (PE 302.233)
on the proposal for a Regulation of the European Parliament and of the Council
regarding public access to European Parliament, Council and Commission documents

Proposal for a regulation COM(2000) 30 – C5-0057/2000 – 2000/0032(COD)

Text proposed by the Commission

Amendments

(Compromise Amendment 88, by Michael Cashman and Hanja Maij-Weggen)
Article –1 (new)

Purpose

The purpose of this Regulation is:

- a) to define the principles, conditions and limits on grounds of public or private interest governing the right of access to European Parliament, Council and Commission (hereinafter “the institutions”) documents provided for in Article 255 of the EC Treaty in such a way as to ensure as wide access to documents as possible,*
- b) to establish rules ensuring the easiest possible exercise of this right, and*
- c) to promote good administrative practice on access to documents.*

Justification:

(Compromise Amendment 89, by Michael Cashman and Hanja Maij-Weggen)
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***.

Beneficiaries and scope

1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, ***has a right of access to European Parliament, Council and Commission documents***, subject to the ***principles, limits and conditions defined in the present Regulation***.

2. ***The institutions may under the same conditions grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.***

Justification:

(Compromise Amendment 90, by Michael Cashman and Hanja Maij-Weggen)
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.

3. This Regulation shall apply to all documents held by ***an institution***, that is to say, documents drawn up or received ***by it*** and in ***its*** possession, ***in all areas of activity of the European Union***.

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.

4. *Without prejudice to Articles 4 and 9, documents shall be accessible following a written application, directly in electronic form or through a register. In particular, documents drawn up or received in the course of a legislative procedure shall be made directly accessible in accordance with Article 12.*

5. *Documents which are sensitive on account of their highly confidential content shall be subject to special treatment in accordance with Article 9.*

6. *This Regulation shall be without prejudice to rights of public access to documents held by the institutions which might follow from instruments of international law or acts of the institutions implementing them.*

Or. en

Justification:

(Compromise Amendment 91, by Michael Cashman and Hanja Maij-Weggen)
Article 3

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*

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); concerning a matter

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;

relating to the policies, activities and decisions falling within the institution's sphere of responsibility;

(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

(b) "third party" shall mean any natural or legal person, or any entity outside the institution *concerned*, including the Member States, other Community *or* non-Community institutions and

and bodies and non-member
countries.

bodies and non-Member States.

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.

Or. en

Justification:

(Compromise Amendment 92, by Michael Cashman and Hanja Maij-Weggen)
Article 4

The institutions shall refuse access to documents where disclosure *could significantly* undermine the protection of:

1. The institutions shall refuse access to documents where disclosure *would* 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,"*)
 - *court proceedings,*
 - *inspections, investigations and audits,*
 - *infringement proceedings,*

- (a) the public interest *as regards*:
- public security;
 - defence and *military matters*;
 - international relations;
 - the financial, monetary or economic policy of the Community or a Member State;

- *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.*

- (b) privacy *and the integrity of the* individual, in particular *as protected by Community legislation regarding the protection of personal data.*

2. *The institutions shall refuse access to a document where the disclosure would undermine the protection of:*

- commercial interests of a natural or legal person, *including* intellectual property.
- *court proceedings and legal advice;*
- *the purpose of inspections, investigations and audits;*

unless there is an overriding public interest in the disclosure.

3. *Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution may be refused if its disclosure could seriously undermine the institution's*

decision-making process, unless there is an overriding public interest in disclosure.

Access to documents containing individual opinions for internal use as part of deliberations and preliminary consultations within the institution concerned may be refused even after the decision has been taken if disclosure would seriously undermine its ability to carry out its duties, unless there is an overriding public interest in disclosure.

- 4. A Member State may, request the institution not to disclose a document originating from that Member State without its prior agreement.*
- 5. As regards third party documents not covered by paragraph 4, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be handed out.*
- 6. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.*
- 7. The exceptions shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. In the case of documents covered by the exceptions relating to privacy or commercial interests and sensitive documents, the exceptions may, if necessary, continue to apply after this period.*

Or. en

Justification:

(Compromise Amendment 93, by Michael Cashman and Hanja Maij-Weggen)

Article 4a (new)

Documents in the Member States

Where a Member State receives a request for a document in its possession, originating from an institution, it shall consult with the institution concerned if the Member State considers that an opinion from that institution is necessary in order to take a decision that will not jeopardise the attainment of the objectives of this Regulation.

Or. en

Justification:

(Compromise Amendment 94, by Michael Cashman and Hanja Maij-Weggen)

Article 5

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

1. Applications for access to a document shall be made in *any written form, including electronic form, in one of the languages referred to in Article 314 of the EC Treaty and* in a sufficiently precise manner to enable the institution to identify the document. *The applicant is not obliged to state reasons for his application.*

institution concerned shall confer with the applicant informally, with a view to finding a fair solution.

(Heading and paras 2-4 are in Article 5a (new) below)

2. *If an application is not sufficiently precise the institution shall ask the applicant to clarify the application and shall assist the applicant in doing so, e.g. by providing information on the use of the public registers of documents.*
3. *In the event of applications relating to very long documents or a very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution.*
4. *The institutions shall provide information and assistance to citizens on how and where applications for access to documents can be made.*

Or. en

Justification:

(Compromise Amendment 95, by Michael Cashman and Hanja Maij-Weggen)
Article 5a (new)

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***.

1. ***Processing of initial applications***
Applications for access to documents shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. In any event, within 15 working days from registration of the application, the institution shall either grant the applicant access to all the documents

applied for and provide access in accordance with Article 7 within that period or, in a written reply, inform the applicant of the reasons for the total or partial refusal and of his right to make a confirmatory application in accordance with paragraph 2.

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. *In the event of a total or partial refusal, the applicant may, within 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.*
3. In exceptional cases, *e.g. in the event of an application relating to very long documents or to a very large number of documents*, the *15 working days* time-limit provided for in paragraph 1 may be extended by *15 working days*, provided that the applicant is notified in advance and that detailed reasons are given.
4. Failure to reply within the prescribed time-limit shall *entitle the applicant to make a confirmatory application*.

Or. en

Justification:

(Compromise Amendment 96, by Michael Cashman and Hanja Maij-Weggen)
Article 6

Processing of confirmatory applications;
remedies

1. *Where the applicant submits a*

Processing of confirmatory applications

1. A confirmatory application *shall be*

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.

handled promptly. In any event, within 15 working days from registration of such an application, the institution shall either grant access to the documents requested and provide access in accordance with Article 7 within that period or, in a written reply, state the reasons for total or partial refusal. Should the institution deny access in total or in part, it shall inform the applicant of the remedies open to him, namely instituting court proceedings against the institution and/or making a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively.

2. In exceptional cases, *e.g. in the event of an application relating to very long documents or to a very large number of documents*, the time-limit provided for in paragraph 1 may be extended by *15 working days*, provided that the applicant is notified in advance and that detailed reasons are given.

3. Failure *by the institution* to reply within the prescribed time-limit shall be *considered* as a *negative reply and entitle the applicant to refer the matter to the Ombudsman and/or to the Court of Justice, under the relevant provisions of the Treaties.*

Or. en

Justification:

(Compromise Amendment 97, by Michael Cashman and Hanja Maij-Weggen)
Article 6a (new)

Treatment of sensitive documents

1. *Sensitive documents are documents originating from the institutions, Member States, Non-Member States or International Governmental Organisations, classified as “Top Secret”, “Secret” or “Confidential” in accordance with the rules of the institution concerned, which protect essential interests of the European Union or of one or more of its Member States in the areas covered by Article 4.1(a), notably public security, defence and military matters.*
2. *Applications for access to sensitive documents within the procedures foreseen in Articles 7 and 8 shall be handled only by those persons who have a right to acquaint themselves with those documents. These persons shall also, in accordance with Article 11.2, assess which references to sensitive documents should be made in the public register.*
3. *Where an institution decides to release a sensitive document access may be provided only after it has been declassified in accordance with the rules of the institution concerned.*
4. *Sensitive documents shall be registered or released only with the consent of the originator.*
5. *A decision by an institution to refuse access to a sensitive document shall be reasoned in a manner which does not harm the interests protected in Article 4.*

6. *Member States shall take appropriate measures to ensure that when handling applications for sensitive documents the principles in this article and Article 4 are respected.*
7. *The rules of the institutions concerning sensitive documents shall be made public.*
8. *The Commission and the Council shall inform the European Parliament regarding sensitive documents in accordance with arrangements agreed between the institutions.*

Or. en

Justification:

(Compromise Amendment 98, by Michael Cashman and Hanja Maij-Weggen)
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.

Access following an application

1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, ***including where available an electronic copy, according to his preference.***

The cost of ***production and sending of copies*** may be charged to the applicant. ***This charge shall not exceed the real cost of production and sending of the copies. Consultation on the spot, copies of less than 20 A4 pages and direct access in electronic form or through the register shall be***

free of charge.

1a. If a document has already been released by the institution concerned and is easily accessible to the applicant, the institution may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document.

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.*

2. Documents shall be supplied in an existing version *and format if they are already available in that language or format, including electronically or in an alternative format, such as Braille, large print or tape, with full* regard to the preference expressed by the applicant.

Or. en

Justification:

(Compromise Amendment 99, by Michael Cashman and Hanja Maij-Weggen)
Article 8

Reproduction for commercial purposes or other forms of economic exploitation

Deleted

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.

Or. en

Justification:

(Compromise Amendment 100, by Michael Cashman and Hanja Maij-Weggen)
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.

Registers

- 1. To make the citizens' rights arising from this Regulation effective each institution shall provide public access to a register of documents. Access to the register should be provided in electronic form. References to documents shall be introduced onto the register without delay.***
- 2. For each document the register shall contain a reference number (including, where applicable, the interinstitutional reference), the subject matter and/or a short description of the content of the document and the date the document was received or drawn up and entered into the register.***
References shall be made in a manner which does not undermine protection of the interests in Article 4.
- 3. The institutions shall immediately take the measures necessary to establish a register which shall be operational at the latest one year from the entry into force of the Regulation.***

Or. en

Justification:

(Compromise Amendment 101, by Michael Cashman and Hanja Maij-Weggen)
Article 9a (new)

*Direct access in electronic form
or through a register*

- 1. The institutions shall as far as possible provide direct public access to documents in electronic form or through a register in accordance with the rules of the institution concerned.*
- 2. In particular, legislative documents (i.e. documents drawn up or received in the course of procedures for the adoption of acts which are legally binding in or for the Member States) should, subject to Articles 4 and 9, be made directly accessible.*
- 3. Where possible, other documents, notably documents relating to the development of policy or strategy, should be made directly accessible.*
- 4. Where direct access is not given through the register, the register shall as far as possible indicate where the document can be found.*

Or. en

Justification:

(Compromise Amendment 102, by Michael Cashman and Hanja Maij-Weggen)
Article 9b (new)

Publication in the Official Journal

- 1. In addition to the acts referred to in Article 254 of the EC Treaty and Article 163 of the Euratom Treaty, subject to Articles 4 and 9, the*

following documents shall be published in the Official Journal:

- a) *Commission proposals submitted to the Council;*
 - b) *common positions adopted by the Council in accordance with the procedures referred to in Articles 251 and 252 of the EC Treaty and the reasons underlying those common positions;*
 - c) *the framework decisions and decisions referred to in Article 34(2) of the Treaty on European Union;*
 - d) *the conventions signed between Member States on the basis of Article 293 of the EC Treaty;*
 - e) *international agreements concluded by the Community or in accordance with Article 24 of the Treaty on European Union;*
2. *As far as possible, the following documents shall be published in the Official Journal:*
- a) *initiatives presented to the Council by a Member State pursuant to Article 67(1) of the EC Treaty or pursuant to Article 34(2) of the Treaty on European Union;*
 - b) *common positions referred to in Article 34(2) of the Treaty on European Union;*
 - c) *directives other than those referred to in Article 254(1) and (2) of the EC Treaty, decisions other than those referred to in Article 254(1) of the EC Treaty, recommendations and opinions.*
3. *Each institution may in its rules of procedure establish which further*

documents shall be published in the Official Journal.

Or. en

Justification:

(Compromise Amendment 103, by Michael Cashman and Hanja Maij-Weggen)
Article 9c (new)

Information

- 1. Each institution shall take the requisite measures to inform the public of the rights they enjoy arising from this Regulation.***
- 2. The Member States shall cooperate with the institutions in the provision of information to the citizens.***

Or. en

Justification:

(Compromise Amendment 104, by Michael Cashman and Hanja Maij-Weggen)
Article 9d (new)

Administrative practice in the institutions

- 1. The institutions shall develop good administrative practices in order to facilitate the exercise of***

the right of access guaranteed by this Regulation.

2. *The institutions shall establish an inter-institutional committee to examine best practice, resolve possible conflicts and discuss future developments on public access to documents.*

Or. en

Justification:

(Compromise Amendment 105, by Michael Cashman and Hanja Maij-Weggen)
Article 9e (new)

Reproduction of documents

This Regulation shall be without prejudice to any existing rules on copyright which may limit a third party's right to reproduce or exploit released documents.

Or. en

Justification:

(Compromise Amendment 106, by Michael Cashman and Hanja Maij-Weggen)
Article 9f (new)

Reports

1. *Each institution shall publish annually a report for the preceding year with the number*

of cases in which the institution refused to grant access to documents and the reasons for such refusals and the number of sensitive documents not recorded in the register.

2. *Within a period of three years following the entry into force of this Regulation the Commission shall publish a report on the implementation of the principles of this Regulation and shall make recommendations, including, if appropriate, proposals for the revision of this Regulation and an action programme of measures to be taken by the institutions*

Or. en

Justification:

(Compromise Amendment 107, by Michael Cashman and Hanja Maij-Weggen)
Article 10, paragraph 1

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].*

Effect

1. *Each institution shall adopt in its rules of procedure the provisions **implementing** this Regulation. Those provisions shall take effect **six** months after the adoption of this Regulation.*

Or. en

Justification:

(Compromise Amendment 108, by Michael Cashman and Hanja Maij-Weggen)
Article 10, paragraphs 2 and 3

Repeal and modification

2. *Within six months of the entry into force of this Regulation the Commission shall examine the conformity of the Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community with this Regulation.*

3. *Within six months of the entry into force of this Regulation the Commission shall examine the conformity of the existing rules on access to documents with this Regulation.*

Or. en

Justification:

(Compromise Amendment 109, by Michael Cashman and Hanja Maij-Weggen)
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 ...**

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 **six**

[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.

months from the date of adoption of this Regulation. .

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

Or. en

Justification:

(Compromise Amendment 110, by Michael Cashman and Hanja Maij-Weggen)
Joint Statement

*Joint statement to be published in the
Official Journal*

- "1. The European Parliament, the Council and the Commission agree that the agencies and similar bodies created by the legislator should have rules on access to their documents which conform to those of this Regulation. To this effect, the EP and the Council welcome the Commission's intention to propose, as soon as possible, amendments to the acts establishing the existing agencies and bodies and to include provisions in future proposals concerning the establishment of such agencies and bodies. They undertake to adopt the necessary acts rapidly.**
- 2. The European Parliament, the Council and the Commission call on the institutions and bodies not covered by paragraph 1 above to**

adopt internal rules on public access to documents which take account of the principles and limits in this Regulation."

Or. en

Justification: