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<Commission>{CULT}Committee on Culture, Youth, Education, the Media and
Sport</Commission>

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<Date>{12/10/2000}12 October 2000</Date>

<TitreType>OPINION</TitreType>

<CommissionResp>of the {CULT}Committee on Culture, Youth, Education,
the Media and Sport</CommissionResp>

<CommissionInt>for the Committee on Citizens' Freedoms and Rights, Justice
and Home Affairs</CommissionInt>

<Titre>on a 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 C5-0057/2000 2000/0032(COD))</DocRef>

Draftsman: <Depute>Ole Andreasen </Depute>

<Procedure>PROCEDURE

The {CULT} Committee on Culture, Youth, Education, the Media and Sport appointed Ole Andreasen draftsman at its meeting of .

It considered the draft opinion at its meetings of 19 September and 10 and 11 October 2000.

At the last meeting it adopted the amendments below unanimously.

The following were present for the vote: Giuseppe Gargani, chairman Vasco Graça Moura, vice-chairman; Ulpu Iivari, vice-chairman; Ole Andreasen draftsman; Pedro Aparicio Sánchez, Per-Arne Arvidsson (for Maria Martens), Christine de Veyrac, Janelly Fourtou (for Christopher Heaton-Harris), Lissy Gröner, Cristina Gutiérrez Cortines (for Mónica Ridruejo), Ruth Hieronymi, Othmar Karas (for Vittorio Sgarbi), Elizabeth Lynne (for Marieke Sanders-ten Holte), Mario Walter Mauro, Pietro-Paolo Mennea, Barbara O'Toole, Doris Pack, Roy James Perry, The Earl of Stockton (for Sabine Zissener), Kathleen Van Brempt, Teresa Zabell Lucas.

Freedom of information is the acid test of a policy of transparency because it creates a contract between the citizens and public authorities to move documents from the sphere of confidentiality to the public domain. Public authorities, and especially the official European Institutions, prefer to promote public information through the Internet and communications campaigns or by selective leaks to journalist and lobbies. But what confidence can the public and users of media have in a policy of transparency, which depends entirely on the discretion of the holders of information and gives no right of equal access to the public?

The Amsterdam Treaty introduced a new article 255 into the EC Treaty, which determines a right for citizens and residents of the European Union of access to documents of the European Parliament, the Council and the European Commission. The European Union institutions exercise judicial, legislative and administrative powers, and are therefore accountable to citizens. The link between this layer of government and the citizen is however unusually distant, indirect and problematic for the latter to determine. If the right of access to information is a precondition for political participation this is particularly true the further the decision making process is removed from the local sphere. The rapporteur has the opinion that the higher the degree of openness of the European Institutions is, the higher is the legitimacy towards the European Union and its institutions among the citizens. A higher degree of legitimacy is also assumed as a precondition of a more positive attitude of the "man in the street" towards the European Union.

Freedom of information is part of transparency, which in turn is particularly important to connect or reconnect the Union with its citizens. The Committee on Culture, Youth, Education, the Media and Sport considers that the transparency of the decision making process strengthens the democratic nature of the European Institutions and the public's confidence in the administration. According to the European Ombudsman, Mr. Söderman, "transparency means that: the process through which public authorities make decisions should be understandable and open; the decisions themselves should be reasoned; as far as possible, the information on which decisions are based should be available to the public".

Special efforts are needed by the European Institutions with their complex decision making process to achieve transparency and overcome the disinterest shown for example by voters in the June 1999 European election campaign for the European Parliament. Access to documents contributes to open debate on more equal terms and improves the chances not only of well-organized interest but also private individuals and bodies less expert in European affairs, to participate and enrich the debate.

Individual citizens and organized interests should not only have a right to receive information, but also monitor the activities of public authorities carried out on their behalf, and indeed it is their duty to do so. The current Commission in the hearings with the European Parliament committees has shown strong commitment towards greater transparency. The Commissions proposal is regarded as a step forward, but it is regrettable that the proposal does not guarantee as broad openness as possible. This will obstruct the realization of the spirit of the Amsterdam Treaty: to work as openly as possible. The main problem of the proposal of the Commission is the large number of exceptions to the accessibility of documents, which are way too general. A result of the vague formulation of

the exceptions is that the competent European Institutions solely can decide if a certain document should be open to the public or not.

The proposal does not concern internal documents, at any stage. Plans and working documents are important to the democratic process and should be made public after a certain time. The rapporteur has the full understanding of the fact that all documents cannot be made public at all stages, but as background material they are important and should be accessible.

It is a step forward that the proposal proposes both incoming and outgoing documents to be covered by the proposal. However, it is strongly dissatisfactory that the proposal contains limits of access for incoming documents.

AMENDMENTS

The {CULT} Committee on Culture, Youth, Education, the Media and Sport calls on the 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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<Amend>(Amendment <NumAm>1</NumAm>)

<TitreAm>Recital 1 (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 the European Union without open institutions. To ensure such a debate is nevertheless important in order to gain trust and confidence, especially among young people, who are the future of Europe.*</AmJust>

</Amend><LANG:EN><Amend>(Amendment <NumAm>2</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

<TitreJust>Justification:</TitreJust>

<AmJust>Cultural and linguistic differences between Member States have to be recognised. Transparency can help to avoid problems arising from these differences.</AmJust>

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

The rules on public access to documents should be drafted as clearly as possible. They should outline the limits of access as well as the procedure for complaints.

<TitreJust>Justification:</TitreJust>

<AmJust>These rules are directed at a broad public that might be interested in requesting access to documents. It is therefore particularly important that it is clear and easy to understand for all possible users which rights they have and how they could possibly enforce those rights</AmJust>

<Amend>(Amendment <NumAm>4</NumAm>)
<TitreAm>Article 3 (a)

Definitions

For the purpose of this Regulation :</TitreAm>

(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 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;

(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 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 **which were explicitly marked non-public**, and excluding informal messages;

<TitreJust>Justification:</TitreJust>

Transparency of the decision-making process means, that internal documents should also be available to the public. There may of course be some internal documents which should be

excluded from public access, in these particular cases they should be clearly marked non-public from the beginning. <AmJust></AmJust>

</Amend><LANG:EN><Amend>(Amendment <NumAm>5</NumAm>)
<TitreAm>Article 4

Exceptions</TitreAm>

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;*

1. The right of access to official documents may be restricted only if restriction is necessary having regard to:

- (a) the security of the Union or its relations with a foreign state or an international organisation;*
- (b) the central finance policy, monetary policy or foreign exchange policy of the Union;*
- (c) inspections, investigations and audits;*
- (d) court proceedings, infringement proceedings, including the preparatory stages thereof;*
- (e) the public economic interest;*
- (f) the protection of the personal integrity or economic conditions of individuals;*
- (g) the protection of commercial and industrial secrets;*
- (h) the preservation of animal or plant species;*

(c) *commercial and industrial secrecy of 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.*

2. *When the above exceptions are only relevant as regards part of a document, partial access shall be granted.*

<TitreJust>Justification:</TitreJust>

<AmJust>The list of the exceptions from public access should be drafted as clearly and simply as possible. There should be as few exceptions as possible. The grounds on which a third party or a Member State might reasonably request classification of a document are adequately covered by article 4.1. Where only part of a document is covered by an exception, access must be granted to the remainder of the document.</AmJust>

</Amend><Amend>(Amendment </NumAm>6</NumAm>)

<TitreAm>Article 5, paragraph 4

Processing of initial applications</TitreAm>

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.

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 **positive** response.

<TitreJust>Justification:</TitreJust>

<AmJust>At the confirmatory stage the Commission proposal already states that failure to reply within the prescribed time limit should be treated as a positive response by the EU-Institution. There is no reason why this should not already be the case at the first stage of the

procedure. This will oblige the EU-Institutions to treat all requests seriously and speedily

</Amend>

<Amend>(Amendment <NumAm>7</NumAm>)
Article 7(1)

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.

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

The cost of the document provision service shall be determined annually (initially on the basis of estimates), with a view to establishing a rate which shall apply only in the following instances:

- where the document clearly serves a commercial or a professional management-related purpose and, in any event, where the applicant is an undertaking or the office of a professional concern;

- where drawing up the requested document necessitates employing considerable human, computer or material resources.

<TitreJust>Justification:</TitreJust>

Costs relating to professional services provided by private-sector undertakings, bodies or professionals should not be borne by the public purse. Furthermore, potential routine requests for documents which may amount to thousands of pages or require several days administrative or computer work should be discouraged.

</Amend>

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

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.

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 **complete** register of documents.

<TitreJust>Justification:</TitreJust>

<AmJust>TheThe complete nature of the register needs to be made explicit, otherwise there could be room for omissions.</AmJust>

⁰ OJ C 177 E from 27.6.2000, p. 70.