

Amended proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (¹)

(2001/C 240 E/25)

COM(2001) 299 final — 2000/0032(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 1 June 2001)

1. BACKGROUND

Article 255 of the Treaty establishing the European Community, as amended by the Treaty of Amsterdam, states that 'Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents'. Within two years of the entry into force of the Amsterdam Treaty, the Council, acting in accordance with the codecision procedure, is to lay down general principles and limits governing this right of access.

On 28 January 2000, the Commission presented a proposal for a Parliament and Council Regulation aimed at implementing the right of access thus provided for in the Treaty. On 16 November 2000 Parliament approved amendments to the proposal; most of these the Commission was unable to accept. Parliament deferred voting on its legislative resolution, thus allowing negotiation between the institutions before the formal completion of the first reading. Negotiations began in an informal 'trialogue' on 24 January 2001, and resulted in a compromise proposal, which was approved on 25 April 2001 by Parliament's Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, by the Permanent Representatives Committee (Part 2), and by the Commission.

At its sittings on 2 and 3 April 2001, Parliament adopted a resolution amending the Commission proposal in line with the compromise negotiated between the three institutions. The Commission told the House that it would accept all of these amendments.

2. THE AMENDMENTS

The Commission agrees to incorporate into its amended proposal, without change, the compromise amendments numbered 81 to 119 which Parliament adopted at the sitting on 3 May. Amendments 81 to 118 are described below; amendment 119 is a technical amendment which confirms the withdrawal of some of the amendments Parliament had approved on 16 November 2000.

2.1. Recitals (amendments 81 to 97)

The amendments to the recitals generally serve to clarify the objectives of the Regulation. Some recitals are also

amended to take account of changes made to the corresponding articles.

2.2. Purpose, beneficiaries and scope (Articles 1 and 2 — amendments 98 and 99)

The new Article 1 restates the purpose of the Regulation. Institutions are left free to grant access to documents to persons who are not resident or who have not got their registered office in a Member State; this provision spells out the present practice.

2.3. Definitions (Article 3 — amendment 100)

In order to protect the institutions' ability to formulate policy, the Commission originally proposed that the right of access should not apply to documents for internal use, such as discussion documents, opinions of departments, or informal messages. This restriction is now removed, and the definition of documents that currently applies remains unchanged. But documents for internal use are protected by specific exceptions in Article 4(3) (see below).

2.4. Limits to the right of access (Article 4 — amendment 101)

Nature of the exceptions

In order to promote greater openness, a document covered by one of these exceptions is nevertheless to be disclosed where the interest to be protected is overridden by the public interest in disclosure, though this principle does not apply where the interest to be protected is the public interest, or privacy and the integrity of the individual. Where the harm likely to be caused by disclosure outweighs the interest in disclosure, the institution must refuse access.

List of exceptions

In its initial proposal the Commission had expressly included infringement proceedings, including the preparatory stages, among the overriding exceptions.

^(¹) OJ C 177 E, 27.6.2000, p. 70.

In a spirit of compromise, the Commission is prepared to accept that infringement proceedings should not be expressly included among the exceptions listed in Article 4(2), because it considers that the agreed form of the Regulation implies that present practice with regard to the exercise of its responsibilities in the monitoring of compliance with Community law will be maintained. Present practice derives from the interpretation of Community law by the Court of Justice. The Commission will draw attention to this practice in a statement to be entered in the Council minutes.

Protection of the 'space to think'

The new paragraph 3 allows protection of documents for internal use, before a decision is taken, and documents containing opinions for use as part of deliberations and preliminary consultations within the institutions, even after a decision has been taken in some cases.

Third-party documents

Paragraph 4 states that the institution is to consult the third party concerned in order to determine whether disclosure is to be refused under one of the exceptions. Paragraph 5 reproduces Declaration No 35 annexed to the Treaty of Amsterdam.

Exceptions to apply only for a limited time

The exceptions are to apply only for the period during which protection is justified. In line with the rules on the opening to the public of the historical archives of the European Communities⁽¹⁾, the exceptions will not normally apply for more than thirty years after the document was written.

2.5. Disclosure by Member States (Article 5 — amendment 102)

The new Article 5 spells out the principle of loyal cooperation stated in the recitals (the old recital 12, now recital 15). It provides that where a Member State is asked for a document originating from an institution, it is to consult with the institution in order to avoid jeopardising the attainment of the objectives of the Regulation.

⁽¹⁾ Commission Decision No 359/83/ECSC of 8 February 1983; Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983.

2.6. Applications (Articles 6 to 8 and 10 — amendments 103 to 105 and 107)

The time allowed for a reply is reduced to 15 working days, which is the time specified in the Code of Good Administrative Behaviour for Staff of the Commission.

2.7. Treatment of sensitive documents (Article 9 — amendment 106)

All the special rules on access to sensitive documents are now grouped in one article. Applications are to be handled only by staff entitled to acquaint themselves with such documents (paragraph 2). Sensitive documents are to be recorded in the register or released only with the consent of the originator (paragraph 3).

2.8. Registers, direct access and publication (Articles 11 to 13 — amendments 109 to 111)

The rules on registers are more detailed than in the Commission's initial proposal. The provisions on direct access and the publication of certain types of document in the Official Journal go beyond the strict scope of Article 255 of the Treaty, but are generally in line with current practice. The three institutions have indicated their intention of developing the dissemination of documents by electronic means.

2.9. Monitoring and follow-up measures (Articles 14 to 17 — amendments 108 and 112 to 115)

The amended proposal contains more specific provisions on coordination between the institutions, where an inter-institutional committee is to be established, and on follow-up and evaluation of the application of the Regulation.

2.10. Entry into force — compatibility of existing legislation with the Regulation (Articles 18 and 19 — amendments 116 and 117)

Specific rules on access to documents in existing legislation are to be re-examined in the light of the Regulation. The legislation on the opening to the public of the historical archives of the European Communities is to be studied in order to establish that it does not contain anything that conflicts with the Regulation (see point 2.4 above).

2.11. Agencies — call to institutions and bodies not covered by the Regulation (joint statement — amendment 118)

The rules on public access to documents are to be made applicable to agencies set up by the institutions covered by the Regulation. A joint statement promises measures to that effect.

The three institutions call on the Community institutions and bodies not covered by the Regulation to adopt

internal rules on public access to documents which are compatible with the Regulation.

3. CONCLUSION

Acting under Article 250(2) of the EC Treaty, therefore, the Commission amends its proposal for a Regulation as outlined above.
