

# UDENRIGSMINISTERIET

## EUROPAUDVALGET

Alm. del - bilag 1099 (offentligt)

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Til underretning for Folketingets Europaudvalg vedlægges Udenrigsministeriets notat af d.d. vedrørende status for forhandlingerne om aktindsigt i EU.

*Paul Nyrup R.*

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## NOTAT

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### Udenrigsministeriet

Til: Folketingets Europaudvalg J.nr.: N.1, 400.A.2-6-1-4  
CC: Bilag: 1  
Fra: Udenrigsministeriet Dato: 25. april 2001  
Emne: Status for forhandlingerne om aktindsigt i EU.

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Vedlagt følger den senest foreliggende tekst vedrørende forslaget til Europa-Parlamentets og Rådets forordning om aktindsigt i dokumenter fra Europa-Parlamentet, Rådet og Kommissionen.

Siden rådsmødet (udenrigsministre) den 9. – 10. ds. har der været intense forhandlinger på embedsmandsniveau og mellem formandskabet og repræsentanter for Europa-Parlamentet. Det tegner til enighed om vedlagte foreløbige tekst, som på en række væsentlige punkter adskiller sig fra Kommissionens oprindelige forslag, og som samlet udgør et klart fremskridt i forhold til de nugældende regler om aktindsigt. Teksten indebærer bl.a.:

- at undtagelseslisten er blevet gjort betydeligt kortere og klarere i forhold til Kommissionens oprindelige forslag
- at alle dokumenter, som institutionerne er i besiddelse, som udgangspunkt vil være omfattet af retten til aktindsigt (efter de nugældende regler kan der f.eks. hverken opnås adgang til dokumenter, som institutionen ikke selv har forfattet, eller som falder ind under den såkaldte Solana-beslutning fra august 2000)
- at anmodninger om aktindsigt skal behandles hurtigere (svarfrist på 15 dage), end tilfældet er i dag (svarfrist på 1 måned)
- at det kun er de dele af et dokument, der er omfattet af en undtagelsesbestemmelse, der kan undtages – resten skal udleveres
- at anmodninger om aktindsigt i et EU-dokument indgivet ved en dansk myndighed som hidtil skal afgøres af denne myndighed – i visse tilfælde efter forudgående høring af den pågældende institution.

Forslaget vil være på dagsordenen for samlingen i Europa-Parlamentet primo maj og vil herefter blive sat på dagsordenen for et kommende møde i Rådet.

**Draft Regulation of the European Parliament and of the Council  
regarding public access to European Parliament, Council and Commission documents**

- (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".
- (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 to the citizen in a democratic system. Openness contributes to strengthening the principles of democracy and respect for fundamental rights as laid down in Article 6 of the Treaty on European Union and in the Charter of fundamental rights of the European Union.
- (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. This Regulation consolidates the initiatives that the institutions have already taken with a view to improving the transparency of the decision-making process.
- (4) The purpose of this Regulation is to give the fullest possible effect to the right of public access to documents and to lay down the general principles and limits on such access in accordance with Article 255(2) of the Treaty.
- (5) Since the question of access to documents is not covered by provisions of the ECSC and Euratom Treaties, in accordance with Declaration No 41 attached to the Final Act of the Treaty of Amsterdam, the European Parliament, the Council and the Commission should draw guidance from this Regulation as regards documents concerning the activities covered by those two Treaties.
- (6) Wider access should be granted to documents in cases where the institutions are acting in their legislative capacity, including under delegated powers, while at the same time preserving the effectiveness of their decision-making process. Such documents should be made directly accessible to as great an extent as possible.
- (7) In accordance with 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. Each institution should respect its security rules.
- (8) In order to ensure the full application of this Regulation to all activities of the Union, all agencies established by the institutions should apply the principles laid down in this Regulation.

- (9) On account of their highly sensitive content, certain documents should be given special treatment. Arrangements for informing the European Parliament on the content of such documents should be made through interinstitutional agreement.
- (10) In order to bring about greater openness in the work of the institutions, access to documents should be granted by the European Parliament, the Council and the Commission not only to documents drawn up by the institutions, but also to documents received by them. In this context, it is recalled that Declaration No 35 annexed to the Treaty of Amsterdam provides that a Member State may request the Commission or the Council not to communicate to third parties a document originating from that State without its prior agreement.
- (11) In principle, all documents of the institutions should be accessible. However, certain public and private interests should be protected by way of exceptions. The institutions should be entitled to protect internal consultations and deliberations where necessary to safeguard their ability to carry out their tasks. In assessing the exceptions, the institutions should take account of the principles in Community legislation concerning the protection of data, in all areas of Union activities.
- (12) All rules concerning access to documents of the institutions should be in conformity with this Regulation.
- (13) In order to ensure that the right of access is fully respected, a two-stage administrative procedure, with the additional possibility of court proceedings or complaints to the Ombudsman, should apply.
- (14) Even though it is neither the object nor the effect of this Regulation to amend national legislation on access to documents, it is nevertheless clear that, by virtue of the principle of loyal cooperation 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 and respect the Security rules of the institutions.
- (15) Each institution should take the measures necessary to inform the public about the new provisions in force and train their staff to assist citizens exercising their rights arising from this Regulation. To make it easier for citizens to exercise their rights, each institution should provide access to a register of documents.
- (16) This Regulation is without prejudice to existing rights of access to documents for Member States, judicial authorities or investigative bodies.
- (17) 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. The Council Decision 93/731/EC of 20 December 1993 on public access to Council documents as amended, Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents, European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents, and the rules on confidentiality of Schengen documents should therefore, if necessary, be modified or be repealed.

## **Article 1**

### **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.

## **Article 2**

### **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.
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.
4. Without prejudice to Articles 4 and 9, documents shall be made accessible to the public 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. Sensitive documents as defined in Article 9, paragraph 1, shall be subject to special treatment in accordance with that Article.
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.

### **Article 3 Definitions**

For the purpose 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 relating to the policies, activities and decisions falling within the institution's sphere of responsibility.
- (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 bodies and non-Member States.

### **Article 4 Exceptions**

1. The institutions shall refuse access to a document where disclosure would undermine the protection of:
  - (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;
  - (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, shall be refused if its disclosure would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure would seriously undermine the

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

4. As regards third party documents 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.
5. A Member State may request the institution not to disclose a document originating from that Member State without its prior agreement.
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 as laid down in paragraphs 1-3 above 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.

#### **Article 5 Documents in the Member States**

Where a Member State receives a request for a document in its possession, originating from an institution, unless it is clear that the document shall or shall not be handed out, the Member State shall consult with the institution concerned in order to take a decision that does not jeopardise the attainment of the objectives of this Regulation.

A Member State may instead refer the request to the institution.

#### **Article 6 Applications**

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.
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.

**Article 7**  
**Processing of initial applications**

1. 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 10 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.
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.

**Article 8**  
**Processing of confirmatory applications**

1. A confirmatory application shall be 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 10 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.

**Article 9**

### **Treatment of sensitive documents**

1. Sensitive documents are documents originating from the institutions or their agencies, Member States, Non-Member States or International 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, without prejudice to Article 11.2, assess which references to sensitive documents could be made in the public register.
3. Sensitive documents shall be registered or released only with the consent of the originator.
4. 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.
5. 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.
6. The rules of the institutions concerning sensitive documents shall be made public.
7. The Commission and the Council shall inform the European Parliament regarding sensitive documents in accordance with arrangements agreed between the institutions.

### **Article 10**

#### **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 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.
2. 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.
3. Documents shall be supplied in an existing version and 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.

## **Article 11**

### **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 the 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.

## **Article 12**

### **Direct access in electronic form or through a register**

1. The institutions shall as far as possible make documents directly accessible to the public 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.

## **Article 13**

### **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;

- 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, as well as the European Parliament's opinion in these procedures;
- c) the framework decisions and decisions referred to in Article 34(2) of the Treaty on European Union;
- d) conventions established by the Council in accordance with Article 34(2) of the Treaty on European Union;
- e) the conventions signed between Member States on the basis of Article 293 of the EC Treaty;
- f) 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.

#### **Article 14 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 co-operate with the institutions in providing information to the citizens.

#### **Article 15 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, address possible conflicts and discuss future developments on public access to documents.

#### **Article 16**

## **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.

### **Article 17 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. At the latest by 31 January 2004 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.

### **Article 18 Effect**

1. Each institution shall adopt in its rules of procedure the provisions implementing this Regulation. Those provisions shall take effect on six months after the adoption of this Regulation.
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, in order to ensure the preservation and archiving of documents to the fullest extent possible.
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.

### **Article 19 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 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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## **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 European Parliament 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."*

