

EUROPEAN PARLIAMENT

1999



2004

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

**UNOFFICIAL VERSION FOR
SEMINAR ON 18 SEPTEMBER 2000**

14 September 2000

AMENDMENTS FOR THE DRAFT REPORT AND DRAFT OPINION

on the proposal for a Regulation of the European Parliament and of the Council
regarding public access to European Parliament, Council and Commission
documents
(COM(2000) 0030 – C5-0057/2000 – 2000/0032(COD))

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

Rapporteur: Michael Cashman

Committee on Constitutional Affairs

Draftsman: Hanja Maij-Weggen, Committee on Constitutional Affairs *

(* reinforced Hughes Procedure)

LEGISLATIVE PROPOSAL

Proposal for a European Parliament and Council regulation on regarding public access to European Parliament, Council and Commission documents (COM(2000) 0030 – C5-0057/2000 – 2000/0032(COD))

The proposal is amended as follows:

Text proposed by the Commission ¹

Amendments by Parliament

(Amendment 1 (Compromise))
Recital 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.

In the context of the European Union, Declaration 17 attached to the Maastricht Treaty recognises that "transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration". Transparency can therefore contribute to the strengthening of the principles of liberty, democracy, respect for human rights and freedoms, and the rule of law on which the Union is founded as stated in Article 6 of the Treaty of the European Union.

Justification:

Declaration 17 attached to the Maastricht Treaty is quoted as this emphasises the importance of transparency for the democratic nature of the institutions and a connection is made to Article 6 of the EU Treaty.

(Amendment 2 (Compromise))
Recital 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

The conclusions of the European Councils held at Birmingham, Edinburgh and Copenhagen stressed the need to introduce greater transparency into the work of the

¹ OJ C177, 27.06.2000, p.070.

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.

Union institutions. Following these conclusions, the institutions launched a series of *internal* 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.

Justification:

This amendment highlights the fact that previously there was no specific base in the Treaty for the adoption of rules on access to documents.

(Amendment 3 (Compromise))
Recital 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.

In recognition of the need for further progress in the Union towards greater transparency, the Treaty of Amsterdam introduced Article 255 to the EC Treaty on the right of access to documents. Consistent with the principle of openness in Article 1 of the Treaty on European Union, the purpose of this Regulation which implements Article 255 is to give the fullest possible effect to the right of access to documents and thereby to increase openness and transparency in the institutions. It defines the scope of 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.

Justification:

This Regulation builds on the progress that has already been made and in no circumstances should this Regulation be a step backwards.

(Amendment 4 (Compromise))
Recital 6a (new)

Where bodies and agencies are created by the European Parliament, the Council and the Commission and those bodies are created by and under the responsibility of the institutions, then those bodies should, as regards access to documents, apply the principles in this Regulation.

Justification:

Bodies and agencies created by the institutions should apply the principles in this Regulation to ensure that the institutions are not able to escape provisions of this Regulation by transferring responsibilities to the bodies and agencies created by them as this would undermine the effectiveness of Community law.

(Amendment 5 (Compromise))
Recital 7a (new)

Consistent with Article 207 of the EC Treaty, greater access to documents should be granted at least in those cases where the institutions can be regarded as acting in their legislative capacity. Therefore, in principle, all documents adopted in the course of a legislative procedure must be made public.

Justification:

Reference should be made to Article 207 of the EC Treaty and that greater access should at least be given to documents relating to a legislative procedure.

(Amendment 6 (Compromise))
Recital 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.*

The principles laid down by this Regulation are to be without prejudice to the specific rules applicable to access to documents, *where those rules provide greater access than required by this Regulation or in certain specific areas where such rules are justified. Such rules should be listed in an Annex to this*

Regulation.

Justification:

Where specific rules on access to documents are justified, they should be expressly listed in an Annex.

(Amendment 7 (Compromise)) Recital 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.*

*In principle, all the documents of the institutions may be accessible. However, certain public and private interests may be protected by way of a system of exceptions. The institutions should be entitled to protect **informal information** which **serves the provision of personal opinion or the free exchange of ideas within the institutions.***

Justification:

All documents of the institutions should be accessible subject to limited exceptions. Although there should be "space to think" internal documents should not be excluded from the scope of the Regulation. The public interest may be in the disclosure of documents.

(Amendment 8 (Compromise)) Recital 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.**

In order to ensure that the right of access is fully observed, a two-stage administrative procedure, with the possibility of court proceedings or complaints to the Ombudsman, should be **established**; where at the confirmatory stage no response **is given, the applicant will be entitled to bring court proceedings or complaints to the Ombudsman.**

Justification

It is not necessary to refer to the existing practice as the Regulation can establish an improved procedure. A failure to reply to a confirmatory application should entitle the applicant to seek further remedies

(Amendment 9 (Compromise))
Recital 10a (new)

Each institution shall examine by reference to specific exceptions laid down in this Regulation whether access to a document may be limited when it is produced or received and at the latest when it is listed in the register.

Justification

This amendment corresponds to Article 3 a (new).

(Amendment 10 (Compromise))
Recital 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.

Each institution ***shall be responsible for taking*** measures 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 ***establish*** a register of documents.

Justification

There should be a positive obligation on the institutions to take measures to inform the public about the new provisions

(Amendment 11 (Compromise))
Recital 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

Consistent with the principle of subsidiarity in Article 5 of the EC Treaty this Regulation ***does not*** amend existing national legislation on access to documents. ***Consistent with*** the principle of loyalty which governs relations between

institutions and the Member States, ***Member States should take care not to hamper the proper application of this Regulation.***

the Community institutions and the Member States ***in Article 10 of the EC Treaty and with Declaration 35 attached to the Treaty on European Union the institutions shall take account of the opinion of the author before taking the final decision on the disclosure of documents. At the same time the institutions concerned should respect the right of Member States to grant access in accordance with their national legislation.***

Justification:

Member States and institutions should take the final decisions on applications received by them, while taking into account the opinion of the author of the documents.

(Amendment 12 (Compromise))

Recital 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 documents¹, Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents² and European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents³

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. ***Those provisions shall supplement this Regulation and may not conflict with its content. This applies also to the conditions under which the public shall have access to Council documents to be elaborated in the Council Rules of Procedure by virtue of Article 207(3) EC Treaty as Article 255(1) EC Treaty is to be seen as the general and overriding provision.***

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 documents ***as amended by the Council decision of 14 August***

¹ 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).

² 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).

³ OJ L 263, 25.9.1997, p. 27.

2000¹, Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents² and European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents³ ***which should therefore be repealed.***

Justification

The specific rules adopted to implement the Regulation must be in conformity with the Regulation. The existing decisions on access to documents must be repealed as otherwise it will lead to a confusing situation for the citizens. The recent Council decision on security and defence documents must also be repealed.

(Amendment 13 (Compromise))
Heading (new)

CHAPTER I
GENERAL PRINCIPLES AND SCOPE

Justification:

This Regulation should be divided into chapters and sections for clarity.

(Amendment 14 (Compromise))
Art. 1 a (new)

Purpose

1. The purpose of this Regulation which implements Article 255 is to give effect to the constitutional principle laid down in Article 1 of the Treaty of the European Union according to which decisions in the Union have to be taken as openly as possible and as closely as possible to the citizen.

¹ OJ L 340, 31.12.1993, p. 43; Decision as amended by Decision 96/705/EC, ECSC, Euratom (OJ L 325, 14.12.1996, p. 19) and by Decision 2000/527/EC (OJ L 212, 23.8.2000, p.9).

² 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).

³ OJ L 263, 25.9.1997, p. 27.

2. Pursuant to Article 255 (2) of the EC Treaty this Regulation defines the principles and conditions on which this right of access to documents can be limited on grounds of public or private interest.

Justification

A first paragraph should point out that what follows is not "a gift" from the institutions to the citizen but simply the exercise of an obligation duty introduced into the Treaty establishing the European Community to take decisions in accordance with the democratic principles of openness and accountability, as defined in Article 1 of the Treaty of the European Union.

(Amendment 15 (Compromise))
Article 1

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 1
Beneficiaries

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has the right **of** access to the documents of the institutions within the meaning of this Regulation, without having to cite reasons for their interest, subject to the **principles and limits determined in this Regulation.**

The institutions shall ensure that the widest and easiest possible public access to documents is granted.

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:

It should be clearly stated that citizens have a right of access. Third country nationals not resident in the Union should be granted access to documents under the same conditions even where they have no enforceable right.

(Amendment 16 (Compromise))
Article 2, paragraph 1

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.

Article 2
Institutions

1. This Regulation shall apply to all documents drawn up by the ***institutions*** or received from third parties and in their possession ***in all areas of activity of the Union.***

Justification:

Articles 28 and 41 TEU expressly provide that the right of access applies to documents in the second and third pillar. Access to documents of third parties should not be limited to documents sent after the entry into force of this Regulation

(Amendment 17 (Compromise))
Article 2, paragraph 2

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.

2. ***This Regulation shall not preclude the application of the specific rules in Annex I.***

Justification:

(The reference to specific rules is too vague as it leaves all specific rules applicable without any examination or justification. Therefore, existing specific rules should be examined and where justified included in an annex to the Regulation.

(Amendment 18 (Compromise))
Article 2a (new)

General Principles

1. *The right of access to documents of the institutions includes access to published documents and access to documents available on the register and documents available on a written request.*
2. *This Regulation does not affect the right of Member States to grant access to documents in accordance with their national legislation.*
3. *This Regulation does not authorise the withholding of documents from the European Parliament*
4. *This Regulation does not deprive citizens of the Union of rights concerning access to documents acquired under instruments of international law.*

Justification:

Article 255 refers to a general right of access to documents of the institutions and does not make any reference to an "application" for documents. Access can be granted in other ways. The Regulation should be without prejudice to higher standards of access under national legislation. The purpose of this Regulation is to implement and define the limits of the citizens' right of access to documents. The European Parliament, as a body with power of scrutiny, cannot be subject to the same limitations. The scope of existing rights as defined under international law, as for example the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, signed in Aarhus, Denmark, on 25 June 1998, cannot and should not be limited by this Regulation.

(Amendment 19 (Compromise))
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 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;

Definitions

For the purposes of this Regulation:

- (a) "document" shall mean any content ***held or produced by the institution*** whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) ***authored by an individual, department (unit, division, directorate) or institution in the implementation of its procedural rules or official duties*** concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility.

"document" shall not mean informal information which serves the provision of personal opinion or the free exchange of ideas ("brain storming") within the institutions.

- (b) "institutions" shall mean the European Parliament, the Council and the Commission ***as well as***
- ***Their internal and subsidiary bodies (such as Parliament Committees, Council Committees and Working Groups)***
 - ***Agencies created by the institutions and accountable to the institutions, as listed in Annex II.***

Within a period of one year, the Commission shall where necessary present formal proposals in relation to the agencies in Annex II.

In relation to the Europol Convention, the provisions of the Treaty apply.

- (c) "European Parliament" shall mean Parliament bodies (and in particular the Bureau and the Conference of Presidents), Parliamentary Committees, the political groups and departments; *Deleted.*
- (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; *Deleted.*
- (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; *Deleted.*
- (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. *Deleted.*

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.

Justification:

Documents must have an 'author' acting in an official capacity and responsible for the content and classification. Consistent with current practice, "internal documents" should not be excluded from the scope of the Regulation.

The "institutions" should include the internal and subsidiary bodies which must be defined in the internal rules of procedure of the institutions.

To ensure that the institutions do not escape their obligations by delegating powers to bodies and agencies, the principles in the Regulation should apply to those bodies which have been

created by the institutions and for which they have responsibility.

These agencies are defined in Annex II. The Commission should make proposals within one year of the entry into force of the Regulation concerning modifications to the rules establishing the bodies, the internal rules of procedures or procedures for appeals.

In relation to Europol, it is for the Council to ensure the revision of the Convention on the initiative of a Member State or from the Commission, after consulting the Parliament.

(Amendment 20 (Compromise))
Article 3a (new)

Principles on Access

- 1. All documents shall be accessible unless the limits on access set out in Article 4 of this Regulation apply.***
- 2. If an institution wishes to limit access to a document, it has to classify the document as soon as the document is produced or received and at the latest when it is listed in the register referred to in Article 9. A later classification cannot limit the access to a document except in exceptional circumstances.***

The classification must include a reference to the exception concerned.

Where the conditions for the application of an exception exist for a certain time only, classification shall be limited in time accordingly.

- 3. At the time of an application for disclosure, the institution should assess whether the exception in Article 4 still applies. In any event all classifications not limited in time shall be reviewed at regular intervals.***

Justification:

The principle should be that all documents of the institutions are public unless the author responsible classifies them as non-public at the time that the documents are produced. The classification should include the reasons based on the exceptions in Article 4 and the period of time for which the classification is valid, this may be by reference to a specific period of time, the phase of the procedure or a specific event. At the time of an application for a document on the register the institution must reassess whether the classification is correct.

(Amendment 21 (Compromise))
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***

Exceptions

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

- (a) public security ***in the European Union and/or in the Member States;***
- (aa) defence and ***military matters;***
- (ab) international relations ***with third countries of the European Union and/or the Member States;***
- (ae) ***court proceedings, and the preparatory stages of infringement proceedings;***

- (b) privacy and the ***protection of the***

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;*

individual;

(ba) the protection of commercial and industrial secrets of a specific natural or legal person;

(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.*

Justification:

The exceptions should be discretionary, not mandatory. The list of exceptions should cover all the permitted exceptions. The list should be clear and concise. It is not necessary to have a

separate category for confidentiality requested by a third party as the third party requesting confidentiality should be required to indicate one of the other exceptions.

(Amendment 22 (Compromise))
Article 4a (new)

Measures to be agreed by the institutions

Within a period of one year, the institutions shall agree the following common elements which will provide the basis for the adoption of the internal rules referred to in Article 255:

- a) agreed rules for the classification of documents to which, following an assessment the exceptions in Article 4 apply and therefore access may be limited, including:***
- treatment and protection of such documents, including very confidential documents***
 - application of the security gradings (top secret, secret, confidential or restricted)***
 - transmission of classified documents between the institutions***
 - procedures relating to challenges to classifications and referral/appeal to the European Information Officer***
 - procedures relating to the provision of information classified as confidential to a select committee of the European Parliament;***
- b) general measures on the production, storage and diffusion of documents (through a common interface), including measures on quality of drafting of legislation and archiving***

*of documents*¹.

Justification:

An interinstitutional agreement on the classification of documents and disclosure of documents is necessary. This should include a system for resolving disputes concerning the classification of another institution.

(Amendment 23 (Compromise))
Heading (new)

CHAPTER II
THIRD PARTIES AND MEMBER STATES

Justification:

This regulation should be divided into chapters and sections for clarity.

(Amendment 24 (Compromise))
Article 4b (new)

Documents of Member States or third parties

- 1. Any Member State or third party which transmits documents to an institution, shall indicate, whether and which parts of the documents are not to be disclosed to the public.***
- 2. The third party must refer to the relevant exception(s) in Article 4 and must state whether the classification is limited in time.***
- 3. The Member State or third party may submit a "public" version which may be disclosed by the institution.***

¹ *As defined in 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*

4. *The institutions shall decide whether the document or part of document in question can be made public.*
5. *If the institution decides that, contrary to the opinion of the Member State or third party, the document should be disclosed, the institution shall immediately inform the third party or Member State of its reasons for disclosure and the date on which the information will be disclosed (which will not be less than one week from the date of notification) and the right to seek interim measures from the European Court of Justice.*

Justification:

At the time that the Member State or third party sends a document to an institution, it should already indicate whether and which parts it considers can not be disclosed . The final decision should be taken by the institution which has received an application but it must give the Member State or third party the possibility of seeking interim measures from the European Court of Justice.

(Amendment 25 (Compromise))
Article 4c (new)

Relationship with the Member States

1. *Where a Member State receives a request for documents considered classified by an institution and which according to the rules of that Member State may be disclosed, the Member State shall immediately inform the institution.*
2. *The Member State shall decide whether the documents or parts of document in question can be disclosed.*

3. *The Member States and the institutions shall cooperate in the provision of information to the citizens.*

Justification:

The Regulation should not modify the national rules on access to documents, but the Member States must respect the spirit of loyal cooperation in Article 10 of the EC Treaty.

(Amendment 26 (Compromise))
Heading (new)

CHAPTER III **ACCESS TO DOCUMENTS**

Section 1 – Right of Access

Justification:

This Regulation should be divided into chapters and sections for clarity.

(Amendment 27 (Compromise))
Article 4d (new)

Publication of documents in the Official Journal

In addition to the documents required to be published by Article 254 of the EC Treaty, the documents referred to in Annex III shall be published in the Official Journal including, where appropriate, the date of entry into force.

Justification:

Article 254 requires regulations, directives and decisions adopted under the co-decision

procedure to be published in the Official Journal. Many other legislative documents are published in the Official Journal, but, consistent with Article 207, the institutions should be under an obligation to publish all "final" documents relating to legislative procedures.

(Amendment 28 (Compromise))
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.***

Documents accessible on written application

1. All applications for access to a document shall be made in writing ***in one of the official languages of the institutions*** 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 ***for the purposes of identifying the documents.***

"In writing" also comprises applications in electronic form such as fax or e-mail.

2. Within ***two weeks*** of registration of the application, the institution shall inform the applicant, in a written reply, of the outcome of the application.
3. Where the institution gives a negative reply to the applicant, ***the institution shall state the reasons for its refusal, the period of time during which the document can not be disclosed and, where relevant, the source from which the applicant may obtain the document.***

3a. Where the institution gives a negative

reply because part of the document is covered by any of the exceptions provided for in Article 4, the institution shall provide an edited version of the document .

3b. The institution shall also inform the applicant that, within one month of receiving the reply, he is entitled to make a confirmatory application asking the institution to reconsider its position.

3c. If the institution considers that the document may be disclosed within a short period, the institution must send the document to the applicant within two weeks after the date on which the document can be disclosed.

Justification:

If a system of classification is established, then, in the case of a negative response, the first response should state the reasons for refusal, the period of time for which the classification is valid and where the document has been published or is available from another body, the source from whom the applicant may be able to obtain the document.

Where part of the document is covered by an exception, then access must be granted to the remainder of the document. The institution should also inform the applicant of his right to make a confirmatory application.. Where the document is not currently public but where it will become public after a short period of time, for example, after being sent to the addressee, the institution should be required to send the document once it becomes public

(Amendment 29 (Compromise))
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

Processing of confirmatory applications

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.***

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 ***entitle the applicant to seek the remedies in Articles 9d.***

Justification:

A negative response should include the reasons for refusal and inform the applicant of the remedies available.

(Amendment 30 (Compromise))
Heading (new)

Section 2 – Exercise of right of access

Justification:

This Regulation should be divided into chapters and sections for clarity.

(Amendment 31 (Compromise))

Article 7

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.

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

In the case of very large documents or a very large number of documents the cost of making copies may be charged to the applicant. The charge has to be limited to a reasonable sum.

2. Documents shall be supplied in *the medium and* in *the* language version *requested by the applicant, or in the language of the application, provided that that language version is available.*

Justification:

In order not to create any unnecessary obstacles to a request for access to documents a limitation to the principle of cost bearing seems appropriate. Second part of the second paragraph is moved to Article 5.

(Amendment 32 (Compromise))

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

Reproduction for commercial purposes or other forms of economic exploitation

1. *This Regulation does not interfere with rights, existing by virtue of intellectual or industrial property, that protect information contained in*

authorisation of the right-holder.

documents.

2. *Any third party or Member State that receives information under this Regulation is responsible for their compliance with the applicable Union, national or international law relating to the protection of intellectual or industrial property rights.*

Justification:

Legislation for the protection of industrial and intellectual property rights already exists and this Regulation should not change the existing rules. It will be the duty of the person disseminating the information to comply with the applicable legislation.

(Amendment 33 (Compromise))
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.***

Information

Each institution shall ***be responsible for informing*** the public of the rights they enjoy as a result of this Regulation ***and publishing in the Official Journal*** :

- a) ***the internal rules of procedure;***
- b) ***the structure of the institution including details of any departments, committees, and formal working groups;***
- c) ***the person to whom written applications for documents should be addressed and;***
- d) ***the means of access to the register; and***
- e) ***a code of conduct on transparency for officials***

Justification:

The institutions have a responsibility to inform the public of their rights and for providing the information such as the rules of procedures which will enable them to exercise their rights. The obligation to provide a register is now in Article 9a.

(Amendment 34 (Compromise))
Article 9a (new)

Registers

1. Within one year of the entry into force of the Regulation each institution shall establish a register of its documents which must be widely accessible to the public.

The register shall contain the date when the document was produced or received, a title indicating its content and the type of classification. When a document has been released as a result of a request, this shall be notified and indicated in the Register.

Where a document or parts thereof are subject to an exception under Article 4, the register shall indicate to what extent and on which grounds access to the document is limited.

Wherever possible documents shall be made directly accessible via the Internet and other forms of computer telecommunications.

2. Documents of the institutions which must at a minimum be included in the register are listed in Annex IV and include all documents created by that institution in the course of a procedure for the adoption of legally binding measures, notably all proposals, opinions, working documents, agendas, documents for discussion at formal meetings, minutes and declarations.

Justification:

“On-line” access through a register would make it possible for citizens to have access without having to make a formal request. The register could therefore be an interface to the production and storage of documents of the institutions.

(Amendment 35 (Compromise))
Heading (new)

Section 3 – Information Officers.

Justification:

This Regulation should be divided into chapters and sections for clarity.

(Amendment 36 (Compromise))
Article 9b (new)

***Appointment and tasks of the
Information Officer***

1. ***Within six months of the entry into force of the Regulation, each Union institution shall appoint at least one person of appropriate rank as the Information Officer, with the task of:***
 - (a) ***deciding on the response to confirmatory applications and ensuring the correct application of the exceptions in Article 4;***
 - (b) ***ensuring in an independent manner the internal application of rules relating to transparency and supervising the maintenance of the register of documents for that institution;***
 - (c) ***seeking opinion of the European Information Supervisor, if appropriate, on the classification and disclosure of document;***
 - (d) ***ensuring that responses to citizens respect the language rules in Article 21 of the EC Treaty and providing assistance to citizens seeking further information on a***

subject in which the institution is involved.

- 2. The Information Officer shall be provided with the staff and resources required for the performance of his/her duties.*
- 3. Further rules concerning the Information Officer shall be defined in the internal rules of each Community institution or body.*
- 4. The Information Officer may be the same person as the Data Protection Officer referred to in the Regulation to be adopted on the basis of Article 286 of the EC Treaty applying the data protection rules to the Community institutions.*

Justification:

Decisions on confirmatory applications shall be taken in an independent manner by an official of an appropriately high rank. This official should have other duties in relation to the application of this Regulation by the institution, including dealing with disputes within the institution on the correct classification of documents and seeking the opinion of the European Information Supervisor. The internal rules should cover the qualifications, the appointment, dismissal, independence and the tasks, duties and powers of the Information Officer.

(Amendment 37 (Compromise))
Article 9c (new)

Appointment and tasks of the European Information Supervisor

- 1. The institutions shall by common accord nominate one person of appropriate rank as the European Information Supervisor, with the task of:*
 - (a) deciding on appeals against negative decisions on confirmatory applications and*

- ensuring the correct application of the exceptions listed in Article 4;*
- (b) cooperating with the Information Officers of the institutions and providing opinions on the classification of documents;*
 - (c) arbitrating over conflicts between institutions regarding the classification of documents;*
 - (d) examining issues likely to give rise to conflicts in relation to access to documents and proposing solutions to the institutions.*
2. *The European Information Supervisor shall be provided with the staff and resources required for the performance of his/her duties.*
3. *Further implementing rules concerning the European Information Supervisor shall be adopted.*

Justification:

The institutions should jointly appoint a European Information Supervisor who could take the final administrative decision or provide mediation, thus providing a low cost and effective remedy for citizens. The implementing rules shall in particular concern the qualifications, the appointment, dismissal, independence and the tasks, duties and powers, obligations of confidentiality and access to documents of the European Information Supervisor.

(Amendment 38 (Compromise))
Heading (new)

CHAPTER III **REMEDIES AND REPORTS**

Justification:

This Regulation should be divided into chapters and sections for clarity.

(Amendment 39 (Compromise))
Article 9d (new)

Remedies

- 1. Where an applicant receives a negative response to a confirmatory application, then, in accordance with Article 195 of the EC Treaty, the applicant may apply to the Ombudsman to examine whether a case of maladministration has occurred.***
- 2. Where an applicant receives a negative response to a confirmatory application, the applicant may in accordance with Article 230, lodge an appeal before the European Court of Justice.***
- 3. Where an institution decides to disclose a document against the wishes of a third party, it shall give the third party at least one week in which to make an application for interim measures in accordance with Article 243.***
- 4. The Council shall consider whether changes need to be made to the rules of procedure of the European Courts in relation to access to documents, in particular in relation to confidential documents and costs in transparency cases.***

Justification:

The Regulation should state clearly the remedies available to citizens. Appeals may be brought either by the party who has been refused access or by the party whose information is to be disclosed. The possibility of appeal to the ECJ should ensure that the system of exceptions is not abused.

(Amendment 40 (Compromise))
Article 9e (new)

Reports

1. *Within a period of three years the institutions shall produce a report setting out all the measures taken to implement this Regulation.*
2. *Each year, each institution shall submit to the European Parliament a report for the preceding year setting out the number of cases in which the institution refused to grant access to documents and the reasons for such refusals.*

Justification:

Reporting obligations should be included in the Regulation.

(Amendment 41 (Compromise))
Heading (new)

Transitional provisions

Justification:

This Regulation should be divided into chapters and sections for clarity.

(Amendment 42 (Compromise))
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].

Deleted

Justification:

Logically, the provisions on the entry into force of internal rules of procedure should follow

the provisions on the entry into force of the Regulation.

(Amendment 43 (Compromise))
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.

Entry into force

1. This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Communities*.

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

Justification:

Any transitional provisions should be included in the relevant articles.

(Amendment 44 (Compromise))
Article 11a (new)

Effect

Each institution shall adopt in its rules of procedure provisions implementing this Regulation. Those provisions shall take effect on ... [at the latest one year after the entry into force of this Regulation].

Justification:

The internal rules of procedure should be adapted to conform to the Regulation.

(Amendment 45 (Compromise))
Article 11b (new)

From the date of the entry into force of the present Regulation the following shall be repealed:

- a) *Council Decision 93/731/EC of 20 December 1993 on public access to Council documents as amended by the Council decision of 14 August 2000¹,*
- b) *Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents²,*
- c) *European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents³.*

Justification:

The existing rules must be repealed as otherwise the situation will be confusing for the citizens. The recent Council Decision on security and defence documents must also be repealed.

(Amendment 46 (Compromise))
Annex I (new)

Specific Rules

Justification:

The Commission's non-exhaustive and indicative list suggests that the rules below are treated as special rules. This needs to be examined further.

1. *Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (Official Journal L 083, 27/03/1999 p. 0001 - 0009)*

¹ OJ L 340, 31.12.1993, p. 43; Decision as amended by Decision 96/705/EC, ECSC, Euratom (OJ L 325, 14.12.1996, p. 19) and by Decision 2000/527/EC (OJ L 212, 23.8.2000, p.9).

² 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).

³ OJ L 263, 25.9.1997, p. 27.

2. *Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (Official Journal L 082, 22/03/1997 p. 0001 - 0016)*
3. *Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (Official Journal L 136, 31/05/1999 p. 0001 - 0007)*
4. *Commission Regulation (EC) No 2064/97 of 15 October 1997 establishing detailed arrangements for the implementation of Council Regulation (EEC) No 4253/88 as regards the financial control by Member States of operations co-financed by the Structural Funds (Official Journal L 290, 23/10/1997 p. 0001 - 0007)*
5. *Council Regulation (EC, Euratom) No 1026/1999 of 10 May 1999 determining the powers and obligations of agents authorised by the Commission to carry out controls and inspections of the Communities' own resources (Official Journal L 126, 20/05/1999 p. 0001 - 0003)*
6. *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. Commission Decision No 359/83/ECSC of 8 February 1983 concerning the opening to the public of the historical archives of the European Coal and Steel Community.*
7. *Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Official Journal L 281, 23/11/1995 p. 0031 - 0050)*
- [8. *Commission Decision 94/810/ECSC, EC of 12 December 1994 on the terms of reference of hearing officers in competition procedures before the Commission.*]
- [9. *Rules on public access to environmental information of the institutions*]

(Amendment 47 (Compromise))
Annex II (new)

Agencies

CEDEFOP – European Centre for the Development of Vocational Training

*European Foundation for the Improvement of Living and Working Conditions
European Environment Agency*

European Training Foundation

European Monitoring Centre for Drugs and Drug Addiction

European Agency for the Evaluation of Medicinal Products

Office of Harmonisation in the Internal Market (Trade Marks and Designs)

European Agency for Safety and Health at Work

Community Plant Variety Office

Translation Centre for the bodies of the Union

European Observatory for Racism and Xenophobia

Justification:

Bodies and agencies created by the institutions should not be exempt from the application of the Regulation. Although they are not specifically mentioned in Article 255, it would undermine the effectiveness of the Treaty provision if they are not included.

(Amendment 48 (Compromise))
Annex III

Documents to be published in the Official Journal

Final Acts

- (a) Regulations, directives and decision referred to in Article 254(1) and (2) of the EC Treaty and in Article 163 of the Euratom Treaty;*
- (b) the framework decisions, decisions and conventions referred to in Article 34(2) of the Treaty on European Union;*
- (c) the conventions signed between Member States on the basis of Article 293 of the EC Treaty;*
- (d) international agreements concluded by the Community or in accordance with Article 24 of the Treaty on European Union;*
- (e) 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;

Proposals

- (f) proposals of the Commission as referred to in Articles 251 and 252 of the EC Treaty;*
- (g) initiatives presented to the Council by a Member State pursuant to Article 67(1) of the EC Treaty and pursuant to Article 34(2) of the Treaty on European Union; Final Acts*

Common positions

- (h) the common positions adopted by the Council in accordance with the procedures referred to in Articles 251 and 252 of the EC Treaty, the reasons underlying those common positions; and the common positions referred to in Article 34(2) of the Treaty on European Union;*
- 2. The following shall be published in the Official Journal, unless the Council or Coreper decides by qualified majority voting, on a case-by-case basis, that there should not be publication in the Official Journal*
- (a) the common strategies, the joint actions and the common positions referred to in Article 12 of the Treaty on European Union and the measures implementing such joint actions;*
 - (b) the joint actions, the common positions or any other decision adopted on the basis of a common strategy, as provided for in the first*

indent of Article 23(2) of the Treaty on European Union;

- (c) *any measures implementing the decisions referred to in Article 34(2) of the Treaty on European Union and any measures implementing conventions drawn up by the Council in accordance with Article 34(2) of the Treaty on European Union.*
3. *Where an agreement concluded between the Communities and one or more States or international organisations sets up a body vested with powers of decision, the Council shall decide, when such an agreement is concluded, whether decisions to be taken by that body should be published in the Official Journal.*

Justification:

The internal rules of procedure should be adapted to conform to the Regulation.

(Amendment 49 (Compromise))
Annex IV

Documents to be included at a minimum in the register

- *all documents created in the course of a procedure for the adoption of legally binding measures*
- *all documents relating to the formulation and adoption of policy or strategy*
- *all documents relating to the implementation of Union law*

Justification:

Categories of documents which must be accessible through the register should be listed in an Annex.

