

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0035/2003

19 February 2003

REPORT

on the proposal for a Council regulation on amending Regulation (EEC, Euratom) No 354/83 concerning the opening to the public of the historical archives of the European Economy Community and the European Atomic Energy Community
(COM(2002) 462 – C5-0417/2002 – 2002/0203(CNS))

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

Rapporteur: Marcelino Oreja Arburúa

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

CONTENTS

	Page
PROCEDURAL PAGE	4
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	19
OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS.....	15

PROCEDURAL PAGE

By letter of 16 September 2002 the Council consulted Parliament, pursuant to Article 308 of the EC Treaty on the proposal for a Council Regulation amending Regulation (EEC, Euratom) No 354/83 concerning the opening to the public of the historical archives of the European Economy Community and the European Atomic Energy Community (COM(2002) 462 – 2002/0203(CNS)).

At the sitting of 23 September 2002 the President of Parliament announced that he had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and to the Committee on Legal Affairs and the Internal Market, the Committee on Industry, External Trade, Research and Energy and the Committee on Constitutional Affairs for their opinions (C5-0417/2002).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Marcelino Oreja Arburúa rapporteur at its meeting of 2 October 2002.

It considered the Commission proposal and the draft report at its meetings of 10 December 2002, 20 January 2003, 21 January 2003 and 18 February 2003.

At the latter meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Jorge Salvador Hernández Mollar, chairman; Robert J.E. Evans and Giacomo Santini, vice-chairmen; Marcelino Oreja Arburúa, rapporteur; Christian Ulrik von Boetticher, Johanna L.A. Booger-Quaak (for Baroness Sarah Ludford pursuant to Rule 153(2)), Kathalijne Maria Buitenweg (for Patsy Sörensen), Michael Cashman, Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Adeline Hazan, Timothy Kirkhope, Eva Klamt, Ole Krarup, Alain Krivine (for Giuseppe Di Lello Finuoli), Luís Marinho (for Sérgio Sousa Pinto), Hartmut Nassauer, Bill Newton Dunn, Hubert Pirker, Bernd Posselt, Martine Roure, Gerhard Schmid, Ilka Schröder, Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco and Olga Zrihen Zaari (for Carmen Cerdeira Morterero).

The opinion of the Committee on Constitutional Affairs is attached; the Committee on Legal Affairs and the Internal Market and the Committee on Industry, External Trade, Research and Energy decided on 8 October 2002 not to deliver an opinion.

The report was tabled on 19 February 2003.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council Regulation amending Regulation (EEC, Euratom) No 354/83 concerning the opening to the public of the historical archives of the European Economy Community and the European Atomic Energy Community (COM(2002) 0462 – C5-0417/2002 – 2002/0203(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2002) 0462¹),
 - having regard to Article 308 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0417/2002),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinion of the Committee on Constitutional Affairs (A5-0035/2004),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Calls for initiation of the conciliation procedure under the Joint Declaration of 4 March 1975 if the Council intends to depart from the text approved by Parliament;
 5. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 6. Calls on the Convention on the future of Europe to examine the possibility of including all the institutions, agencies and bodies of the European Union within the scope of Article 255 of the EC Treaty in order to facilitate the application of a consistent regime on access to documents and on the historical archives;
 7. Calls on the Budgetary Authority to include in future draft budgets adequate financial resources for the archives and to place the budget line for the archives alongside the budget line for transparency (Article 255 of the EC Treaty);
 8. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 331, 31.12.2002, p. 169.

Amendment 1
RECITAL - 1 (NEW)

(-1) Article 255 of the EC Treaty and Article 42 of the Charter of Fundamental Rights of the European Union give a right of access to European Parliament, Council and Commission documents to any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State.

Justification

Reference to the fundamental provisions in this domain.

Amendment 2
RECITAL 2

(2) The exceptions to public right of access provided for in Regulation (EC) No 1049/2001 are ***applicable for a maximum period of thirty years. The exceptions relating to protection of privacy or commercial interests and the specific provisions on sensitive documents may, however, apply beyond that period if necessary.***

(2) The exceptions to public right of access provided for in Regulation (EC) No 1049/2001 are ***exhaustive and applicable independently of the place in which documents are kept. Documents selected to be kept in historical archives do not constitute a special category of documents in this respect.***

Justification

This clarification seems necessary to avoid a misunderstanding. The "access regime" is the same for all documents within the meaning of the definition in Article 3(a) of Regulation No 1049/2001.

Amendment 3
RECITAL 3

Council Regulation (EEC, Euratom) No 354/83¹ provides that the public will not be given access to certain categories of documents thirty years after the documents were created. ***It*** is necessary to bring these exceptions into line with the exceptions to right of access provided for in Regulation (EC) No 1049/2001.

Council Regulation (EEC, Euratom) No 354/83² provides that the public will not be given access to certain categories of documents thirty years after the documents were created. ***Pursuant to Article 18(2) of Regulation 1049/2001, it*** is necessary to bring these exceptions into line with the exceptions to right of access provided for in Regulation (EC) No 1049/2001.

Justification

Article 18(2) of Regulation 1049/2001 requires the Commission to examine the conformity of the regulation on the archives with the new rules on access to documents and so should be mentioned.

Amendment 4
RECITAL 4 A (NEW)

Whilst the purpose of this Regulation is limited to ensuring conformity with Regulation 1049/2001, a thorough review of the Community archives and of the historical archives should be conducted by the Commission within the next two years;

¹ OJ L 43, 15.2.1983, p. 1.

² OJ L 43, 15.2.1983, p. 1.

Justification

This revision of the archives is solely intended to ensure the compatibility of the Regulation on the archives with the Regulation on access to documents. However, further action is needed to improve the functioning of the archives and increase their transparency.

Amendment 5

ARTICLE 1, POINT -1 (NEW)

Article 1, paragraph -1 (new) (Regulation EEC, Euratom No 354/83)

-1) A new paragraph -1 of Article 1 is added:

-1. The purpose of this Regulation is to ensure that information of historic or administrative value is preserved, and made available to the public, to the fullest extent possible.

Justification

The Regulation should specify its purpose at the beginning.

Amendment 6

ARTICLE 1, POINT 1

Article 1, paragraph 1 (Regulation EEC, Euratom No 354/83)

1. **The** institutions of the European Community and of the European Atomic Energy Community (hereinafter referred to as 'the institutions') shall establish historical archives and open them to the public on the terms provided for by this Regulation after the expiry of a period of thirty years starting from the date of the creation of the document.

1. ***In order to achieve this objective, the*** institutions of the European Community and of the European Atomic Energy Community (hereinafter referred to as 'the institutions') shall establish historical archives and open them to the public on the terms provided for by this Regulation after the expiry of a period of thirty years starting from the date of the creation of the document. ***Until that time, access to such documents shall be governed by means of European Parliament and Council Regulation (EC) No 1049/2001 of 30 May***

For the purposes of this Regulation the Economic and Social Committee *and* the Committee of the Regions ***shall be treated*** in the same way as the institutions referred to in Article 7(1) of the Treaty establishing the European Community.

2001.

This Regulation ***shall apply to*** the Economic and Social Committee, the Committee of the Regions, ***and the agencies and similar bodies created by the institutions*** in the same way as ***it applies to*** the institutions referred to in Article 7(1) of the Treaty establishing the European Community.

Justification

It should be clearly stated that before the expiry of the thirty-year period, access to documents should be governed by Regulation 1049/2001 on public access to documents. This Regulation should also cover the archives of the agencies.

Amendment 7

ARTICLE 1, POINT 1A (NEW)

Article 1, paragraph 3 (Regulation EEC, Euratom No 354/83)

1A) Paragraph 3 of Article 1 is replaced by the following:

3. All documents and records which had been made available before the expiry of the period provided for in paragraph 1 shall remain accessible to the public without restriction and in accordance with the principles, conditions and limits contained in Regulation 1049/2001.

Justification

This original text referred to documents which had been made "freely" available. The word "freely" has been deleted as it is open to different interpretations.

Amendment 8
ARTICLE 1, POINT 1B (NEW)
Article 1, paragraph 4 (Regulation EEC, Euratom No 354/83)

1B) Paragraph 4 of Article 1 is replaced by the following:

4. Access to the historical archives shall be given to any person who applies for it without any need to show an interest.

Justification

It should be made clear that applicants do not have to indicate an interest in order to have access to the historical archives.

Amendment 9
ARTICLE 1, POINT 2
Article 2, paragraph 1 (Regulation EEC, Euratom No 354/83)

1. In the case of documents covered by the **exceptions** relating to privacy and the integrity of the individual and the business interests of an individual or firm, including intellectual property, the exceptions may continue to apply after this period if the relevant conditions for their application are satisfied.

1. In the case of documents covered by the **exception** relating to privacy and the integrity of the individual **as defined in Article 4(1)(b) of Regulation 1049/01** and the business interests of an individual or firm including intellectual property, **as defined in Article 4(2) first hyphen of Regulation 1049/01**, the exceptions may continue **to apply to all or part of the document** after this period if the relevant conditions for their application are satisfied.

Justification

The exceptions should refer to Regulation 1049/2001 to ensure that they are interpreted in the same way. It should also be made clear that the exceptions may only apply to parts of the document.

Amendment 10
ARTICLE 1, POINT 2
Article 2, paragraph 2 (Regulation EEC, Euratom No 354/83)

2. Documents ***containing information on the private or professional life of individual persons***, including files of staff of the European Communities, shall be disclosed in accordance with Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies, and in particular Articles 4 and 5 thereof.

2. Documents ***covered by the exception in Article 4(1)(b) of Regulation 1049/01***, including files of staff of the European Communities, shall be disclosed in accordance with Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies, and in particular Articles 4 and 5 thereof.

Justification

As above, the exceptions should refer to Regulation 1049/2001 to ensure that they are interpreted in the same way.

Amendment 11
ARTICLE 1, POINT 2
Article 2, paragraph 2 a (new) (Regulation (EEC, Euratom) No 354/83)

2a. Before deciding to select a document for permanent preservation in the historical archives the institutions shall, in accordance with internal rules adopted pursuant to Article 9, determine to what extent and for how long access to the document is to be denied on grounds specified in Article 4 of Regulation (EC) No 1049/2001.

Justification

If the historical archives are to fulfil their role as a working tool for researchers and the public at large, it must be clear from the beginning, that means it must be decided beforehand to what extent access is granted and what elements have to remain non-public.

Amendment 12
ARTICLE 1, POINT 2
Article 2, paragraph 3 (Regulation EEC, Euratom No 354/83)

3. Before deciding to make available to the public documents *which, if disclosed, could harm the commercial interests of a firm or individual, including those relating to intellectual property*, the institution shall inform the firm or the person concerned, in accordance with the rules to be defined by each institution, of its intention to make the documents in question accessible to the public. The documents shall not be released if, taking account of the observations of the third parties, the institution considers that their disclosure could jeopardise such commercial interests, unless there is an overriding public interest in disclosure.

3. Before deciding to make available to the public documents *covered by the exception in Article 4(2) first hyphen of Regulation 1049/01*, the institution shall inform the firm or the person concerned, in accordance with the rules to be defined by each institution, of its intention to make the documents in question accessible to the public. The documents shall not be released if, taking account of the observations of the third parties, the institution considers that their disclosure could jeopardise such commercial interests, unless there is an overriding public interest in disclosure.

Justification

As above, the exceptions should refer to Regulation 1049/2001 to ensure that they are interpreted in the same way.

Amendment 13
ARTICLE 1, POINT 3 A (new)
Article 5(Regulation (EEC, Euratom) No 354/83)

3 A) Article 5 is deleted.

Justification

This article becomes redundant if the institutions are held to decide at the time of selection for the archives on exceptions from the principle of access as suggested with amendment 11.

Amendment 14
ARTICLE 1, POINT 4
Article 6 (Regulation (EEC, Euratom) No 354/83)

4) Article 6 is *replaced by the following*:

Where a Member State receives a request for a document in its possession, originating from an institution, unless it is clear that the document must or must not be disclosed, 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.

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

4) Article 6 is *deleted*.

Justification

This article as modified repeats textually Article 5 of Regulation No 1049/2001 and is therefore redundant.

Amendment 15
ARTICLE 1, POINT 5 (NEW)
Article 7 (Regulation (EEC, Euratom) No 354/83)

5) Article 7 is *replaced by the following*:

According to the criteria and procedures laid down by each institution pursuant to Article 9, there shall be a permanent sorting process with the purpose of separating documents and records that are to be preserved from those that have no historical value. Documents selected for permanent preservation in the historical archives are deposited in these archives at least once every calendar year taking the form of files.

Justification

It does not make sense to transfer all documents within the meaning of the definition of Article 3 of Regulation No 1049/2001.

What is important is that the selection of documents is done permanently and in accordance with the agreement with the European University Institute in Florence of 17 December 1984 as final depository of the historical archives.

Amendment 16

ARTICLE 1, POINT 6 (NEW)

Article 8a (new) (Regulation EEC, Euratom No 354/83)

- 6) A new Article 8a is added:**
Where possible and appropriate, the historical archives shall be made accessible either in electronic form or through a register.

Justification

As more and more information is available in electronic form, it should be made directly available over the internet or in electronic form.

Amendment 17

ARTICLE 1, POINT 7 (NEW)

Article 8b (new) (Regulation EEC, Euratom No 354/83)

- 7) A new Article 8b is added:**
Where possible and appropriate, the historical archives shall be made available not only in graphic form, but also in textual mode in order to enable people with sensory difficulties to use it.

Justification

As far as possible, the information should be available in user-friendly formats.

Amendment 18
ARTICLE 1, POINT 8 (NEW)
Article 8c (new) (Regulation EEC, Euratom No 354/83)

8) A new Article 8c is added:

Each institution shall send an Annual Report on their part of the Community archives to the European Parliament.

The European University Institute shall send a report on the historical archives of the European Communities to the European Parliament.

Justification

An annual report is already prepared by the Institute in Florence. This report should be formally sent to the European Parliament, which would enable the Parliament to take into account the financial concerns of the Institute and of the lack of information being transmitted in particular by the Council. The institutions should also provide information on their part of the Community archives.

Amendment 19
ARTICLE 1, POINT 9 (NEW)
Article 8d (new) (Regulation EEC, Euratom No 354/83)

9) A new Article 8d is added:

Within two years from the entry into force of this Regulation, the Commission shall conduct a thorough review of the Community archives and of the historical archives with a view to increasing transparency, improving the functioning of transfers to the historic archives and

improving access for citizens.

The Commission shall if appropriate present legislative measures or an action plan and an analysis of the financial resources required to implement the proposals.

Justification

This revision of the archives is solely intended to ensure the compatibility of the Regulation on the archives with the Regulation on access to documents. However further action is needed to improve the functioning of the archives and increase their transparency.

EXPLANATORY STATEMENT

Background

This proposal of the Commission is presented in accordance with Article 18, paragraph 2 of Regulation 1049/2001 on public access to documents which requires the Commission to examine the conformity of Regulation (EEC, Euratom) No 354/83 concerning the opening to the public of the historical archives with the principles and limits laid down by the new Regulation.

The Commission has presented modifications to Regulation (EEC, Euratom) No 354/83 concerning historical archives which aim to make Regulation 354/83 compatible with Regulation (EC) 1049/2001. The Commission has chosen not to make a proposal based on Article 255 which would imply codecision with the European Parliament. The rapporteur considers that the Commission proposal is acceptable as the Commission stays strictly within the scope of Regulation 1049/2001, and this method avoids having two separate instruments as Article 255 of the EC Treaty only applies to European Parliament, Council and Commission documents.

Moreover, the rapporteur considers that the Parliament is also bound to respect Regulation 1049/2001. Therefore, although it would be desirable to, for example, reduce the period for which the exceptions apply, this could only be done through an amendment to Regulation 1049/2001 on the basis of Article 255 of the EC Treaty. For this reason, the Rapporteur has not proposed any amendments which affect Regulation 1049/2001.

Aim of the historical archives

The aim of the historical archives is to preserve as far as possible the history of the European Union. The documents of the institutions can significantly contribute to the accurate representation of history and the rapporteur considers it important that the historical archives are managed so as to provide a real source of the history of the European Union. To quote Don Quixote on the role of historians:

'For it is the business and duty of historians to be exact, truthful and wholly free from passion, and neither interest nor fear, hatred nor love, should make them swerve from the path of truth, whose mother is history, rival of time, storehouse of deeds, witness for the past, example and counsel for the present, and warning for the future.'

In the past, the European institutions have not made the keeping of historical archives a priority and the resources dedicated to this task have been low. On reading the annual report of the Institute of Florence, it is clear that the Institute considers the financial resources made available too low and that this is preventing it from, for example, advancing on informatics projects. The rapporteur suggests that in future the budget line for the archives is included with the budget line on access to documents and that for the next budget the institutions examine seriously the budget required for an appropriate management of the historical archives.

However, the report also makes it clear that not all the institutions take the transfer of documents to the archives very seriously. It appears that the last transfer of Council documents concerned 1959. The institutions should perhaps re-examine how they want to manage the archives and

then make a commitment to ensuring that documents are transferred to the historical archives on a regular basis.

Amendments

Several of the amendments presented by the rapporteur refer to Regulation 1049/2001 as it is important that Regulation 354/83 on the archives is not applied differently. Of course, Regulation 1049/2001 continues to apply to the documents but with the aim of avoiding any potential conflicts it is better to ensure a coherent approach.

The rapporteur also considers that the regulation on the archives should apply to the agencies and bodies created by the institutions. This is consistent with the joint declaration on public access to documents adopted at the same time as Regulation 1049/2001.

A report on the archives is already prepared by the Institute in Florence, but unfortunately is not very widely available. The rapporteur proposes that it is formally sent to the Parliament on an annual basis which would permit the Parliament to assess it with the annual reports of the institutions on public access to documents. The institutions should also reports on their sections of the Community's archives, and these should also be sent to the European Parliament.

The rapporteur also proposes that the information in the archives is made available in electronic form as far as possible and also in graphic form to make it more user-friendly.

Since the aim of this revision is solely to ensure that the regulation on the archives is consistent with Regulation (EC) No 1049/2001, the rapporteur proposes that the Commission should complete a more rigorous check of the Community's archives and historical archives, and make proposals for improving the way the system operates and to ensure consistency between the institutions.

Finally, the rapporteur proposes that the European Convention be asked to widen the scope of Article 255 of the EC Treaty, so that it covers all the institutions, agencies and bodies, and a consistent regime can be established on access to documents and on the archives, and that the budget line for the archives appears next to the budget line for transparency (Article 255).

28 January 2003

OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS

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

on the proposal for a Council regulation amending Regulation (EEC, Euratom) No 354/83 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (COM(2002) 462 – C5-0417/2002 – 2002/0203(CNS))

Draftsman: Hanja Maij-Weggen

PROCEDURE

The Committee on Constitutional Affairs appointed Hanja Maij-Weggen draftsman at its meeting of 4 November 2002.

It considered the draft opinion at its meetings of 10 December 2002 and 23 January 2003.

At the latter meeting it adopted the following amendments by 15 votes to 1 with 0 abstentions.

The following were present for the vote: Giorgio Napolitano, chairman; Jo Leinen, vice-chairman; Ursula Schleicher, vice-chairman; Iñigo Méndez de Vigo, (for Hanja Maij-Weggen, draftsman), Teresa Almeida Garrett, Juan José Bayona de Perogordo, (for José María Gil-Robles Gil-Delgado), Georges Berthu, Jens-Peter Bonde, Carlos Carnero González, Richard Corbett, Armando Cossutta, Giorgos Dimitrakopoulos, Andrew Nicholas Duff, Neil McCormick, (for Monica Frassoni), Hans-Peter Martin, Gérard Onesta and Johannes Voggenhuber.

SHORT JUSTIFICATION

As the Commission points out in its explanatory memorandum, this proposal for a regulation fulfils an obligation established by Article 18(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (hereinafter: "Regulation")¹ to "examine the conformity of 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".

The Regulation is based on Article 255 of the EC Treaty which since the entry into force of the Treaty of Amsterdam constitutes the legal base for measures defining the principles and the conditions under which the right of access to documents may be exercised.

Whether documents are kept in historical archives or elsewhere makes, in principle, no difference for the question of access to them.

This proposal therefore concerns mainly questions which form part of the subject matter dealt with in the Regulation and complements it.

Consequently, there would have been good reasons to use the same legal base, Article 255, and the same procedure, codecision of Parliament and Council, as the new specific legal base takes precedence over the subsidiary legal base Article 308.

The argument which may however justify not changing the legal base is that the original regulation on historical archives of 1983 was meant to cover documents of all the institutions plus the Court of Auditors and the Economic and Social Committee (Article 1 of Regulation No 354/83) whereas Article 255 of the Amsterdam Treaty only refers to documents of the Parliament, Council and Commission.

The committee responsible will have to make up its mind on this question. It might be recalled in this context that the three institutions published in June last year a "Joint declaration" whereby they agreed that agencies and bodies created by the legislator should be made subject to rules on access to their documents which conform to those of the Regulation and called on institutions and bodies to adopt internal rules on public access to documents which take account of the principles and limits in this Regulation².

The Commission limited the scope of its initial proposal for a Regulation of 21 February 2000 by saying that it "shall not apply where specific rules on access to documents exist"³.

During the codecision procedure which led to the adoption of the Regulation, the Commission and finally the Council accepted the view that the purpose of Article 255 of the EC Treaty was to create a single and uniform set of rules applying to the access of the public to all EU documents. This committee argued that specific rules applicable to access to documents

¹ OJ L 145, 31.5.2001, p. 43

² OJ L 173, 27.6.2001, p. 5

³ COM(2000) 30 fin, OJ C 177, 27.6.2000, p. 70, Article 2(2)

should remain only "where those rules provide greater access than required by this Regulation or in specific areas where such rules are justified. Such rules should be listed in an Annex to this Regulation"¹.

Because of lack of time a different approach was finally chosen: Article 18 of the Regulation put an obligation on the Commission to examine the conformity of the existing rules on access to documents with the Regulation. Regulation 354/83 of 1 February 1983 concerning the opening of the historical archives of the Communities to the public was expressly mentioned as being one of these "existing rules".

The amendments contained in this opinion aim in the first place to clarify and emphasise the functional coherence between the regulation on the archives and Regulation No 1049/2001 as far as the aspect of access to documents and possible limits to it is concerned. The Commission proposal does not do enough to prevent misunderstandings on behalf of the public but also on behalf of officials of the institutions, misunderstandings in the sense that access to documents in historical archives would be subject to special rules or a "special access regime". This is however not the case. The only difference between "normal" documents of an institution and those going into the historical archives is that the latter have to be selected and placed in historical context on the basis of specific criteria. The aspect of limitation of access should be addressed at this moment of selection and transfer into the archives.

The Secretary-General of the Parliament presented recently proposals to the Bureau for a reorganisation of the services keeping the archives of the European Parliament pointing out that the Archive service should be in a position to supply full information and documentation to researchers and members of the public who wish to conduct detailed study into subjects related to the European Union and its history. He should be encouraged in carrying out this important task.

¹ Opinion of the Committee on Constitutional Affairs of 18 October 2000, PE 286.966, Amendment 8, draftsman: Hanja Maij-Weggen

AMENDMENTS

The Committee on Constitutional Affairs calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 New RECITAL - 1

(1) Article 255 of the EC Treaty and Article 42 of the Charter of Fundamental Rights of the European Union give a right of access to European Parliament, Council and Commission documents to any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State.

Justification

Reference to the fundamental provisions in this domain.

Amendment 2 Second RECITAL

(2) The exceptions to public right of access provided for in Regulation (EC) No 1049/2001 are ***applicable for a maximum period of thirty years. The exceptions***

(2) The exceptions to public right of access provided for in Regulation (EC) No 1049/2001 are ***exhaustive and applicable independently of the place in which***

¹ OJ C not yet published in the OJ.

relating to protection of privacy or commercial interests and the specific provisions on sensitive documents may, however, apply beyond that period if necessary.

documents are kept. Documents selected to be kept in historical archives do not constitute a special category of documents in this respect.

Justification

This clarification seems necessary to avoid a misunderstanding. The "access regime" is the same for all documents within the meaning of the definition in Article 3(a) of Regulation No 1049/2001.

Amendment 3 RECITAL 3

(3) Council Regulation (EEC, Euratom) No 354/83 ¹ provides that the ***public will not be given access to certain categories of documents thirty years after the documents were created. It is necessary to bring these exceptions into line with the exceptions to right of access provided for in Regulation (EC) No 1049/2001.***

(3) Council Regulation (EEC, Euratom) No 354/83 provides that the ***institutions open their historical archives to the public after the expiry of a period of 30 years starting from the date of the creation of the document or record unless they were "freely available" before the expiry of this period. This reflects the principle whereby free access to documents is the exception to the rule. This principle has been reversed with the introduction of Article 255 into the EC-Treaty. It is necessary to bring the system of Regulation No 354/83 into line with the letter and spirit of Regulation (EC) No 1049/2001.***

Justification

Self explanatory.

¹ OJ L 043 of 15.2.1983, p. 1- 3

Amendment 4
ARTICLE 1, PARAGRAPH 1
Article 1, paragraph 1, (Regulation (CEE, Euratom) No 354/83)

"1. The institutions of the European Community and of the European Atomic Energy Community (hereinafter referred to as 'the institutions') shall establish historical archives and open them to the public on the terms provided for by this Regulation after the expiry of a period of thirty years starting from the date of the creation of the document. For the purposes of this Regulation the Economic and Social Committee and the Committee of the Regions shall be treated in the same way as the institutions referred to in Article 7(1) of the Treaty establishing the European Community."

"1. The institutions of the European Community and of the European Atomic Energy Community (hereinafter referred to as 'the institutions') shall establish historical archives and open them to the public on the terms provided for by this Regulation after the expiry of a period of thirty years starting from the date of the creation of the document. ***Until that time, access to such documents shall be governed by means of European Parliament and Council Regulation (EC) No 1049/2001 of 30 May 2001.*** For the purposes of this Regulation the Economic and Social Committee and the Committee of the Regions shall be treated in the same way as the institutions referred to in Article 7(1) of the Treaty establishing the European Community."

Justification

The current wording of this provision gives the impression that the historical archives intended for the general public will always lag behind by 30 years. This is certainly not the intention: the archives should be able to provide comprehensive information and documentation to researchers and to members of the general public who wish to carry out a detailed study of topics relating to the European Union and its history.

Amendment 5
ARTICLE 1, PARAGRAPH 1 A (new)
Article 1, paragraph 3, (Regulation (EEC, Euratom) No 354/83)

1a) Paragraph 3 of Article 1 is deleted.

Justification

The paragraph becomes redundant when the "thirty years period" disappears.

Amendment 6

ARTICLE 1, PARAGRAPH 1 B (new)

Article 1, paragraph 4 (Regulation (EEC, Euratom) No 354/83)

4. After the expiry of the 30-year period provided for in paragraph 1, access to the historical archives shall be given to any person who applies for it and agrees to abide by internal rules established for the purpose by each institution.

4. Access to the historical archives shall be given to any person who applies for it and agrees to abide by internal rules established for the purpose by each institution.

Justification

See justification for amendment 4.

Amendment 7

ARTICLE 1, PARAGRAPH 2

Article 2, paragraph 1 (Regulation (EEC, Euratom) No 354/83)

1. In the case of documents covered **by the exceptions relating to privacy and the integrity of the individual and the business interests of an individual or firm, including intellectual property**, if the **relevant conditions for their application** are satisfied.

1. In the case of documents covered **partially or fully, temporarily or permanently by exceptions within the meaning of Article 4 of Regulation (EC) No 1049/2001, those exceptions shall apply in the same way to documents selected for permanent preservation in the historical archives for the first 30 years following the date upon which the document was created. The exceptions may continue to apply after this period** if the conditions **laid down in Article 4** are satisfied.

Justification

It should be pointed out that the rules laid down in Regulation (EC) No 1049/2001 will apply for the first 30 years following which period the standard arrangement will be accessibility with very few exceptions.

Amendment 8
ARTICLE 1, PARAGRAPH 2

Article 2, paragraph 2 (Regulation (EEC, Euratom) No 354/83)

2. Documents containing information on the private or professional life of individual persons, including files of staff of the European Communities, shall be disclosed in accordance with Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the community institutions and bodies, and in particular Articles 4 and 5 thereof.

2. Deleted

Justification

*This paragraph is redundant because of **Article 4 par. 1(b)** of Regulation No 1049/2001 which provides that the institutions shall refuse access to a document where disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data. It is also misleading because it gives the impression as if Articles 4 and 5 of Regulation 45/2001 on the protection of individuals with regard to the processing of personal data constitute a special access regime which is not the case. These provisions deal with "data quality" and "lawfulness of processing".*

Amendment 9

ARTICLE 1, PARAGRAPH 2 B (new)

Article 2, paragraph 2 a (new) (Regulation (EEC, Euratom) No 354/83)

2a. Before deciding to select a document for permanent preservation in the historical archives the institutions shall, in accordance with internal rules adopted pursuant to Article 9, determine to what extent and for how long access to the document is to be denied on grounds specified in Article 4 of Regulation (EC) No 1049/2001.

Justification

If the historical archives are to fulfil their role as a working tool for researchers and the public at large, it must be clear from the beginning, that means it must be decided beforehand to what extent access is granted and what elements have to remain non-public. An ex-post-decision on a case by case basis would not meet the special requirements for archives of this type.

Amendment 10

ARTICLE 1, PARAGARPH 2 C (new)

Article 2, paragraph 5 (new) (Regulation (EEC, Euratom) No 354/83)

5. Files of the European Communities' staff are not eligible for being selected for permanent preservation in the historical archives.

Justification

Institutions are not under an obligation to select all kinds of documents for the historical archives. Staff files do not seem to be of great added value as far as these archives are concerned. They would have to be barred from access to a large degree anyhow because of reasons of protection of privacy and the integrity of the individual. This amendment restates partially Article 2 of the regulation on historical archives in its original version.

Amendment 11

ARTICLE 1, PARARAPH 3 A (new)

Article 5 (Regulation (EEC, Euratom) No 354/83)

1. For the sake of compliance with the 30-year rule provided for in Article 1 (1), each institution shall in good time, and not later than the 25th year following the date of the creation of a document or record, examine all documents and records graded confidential or higher in

1. Delete

order to decide whether or not to declassify them. Documents and records not declassified at the first such examination shall be re-examined periodically and at least every five years.

2. As regards documents and records received from a Member State or from another institution, the institutions shall abide by the classification established by the originator. However, in order to ensure the broadest possible access to Community archives, the institutions and the Member States may agree on procedures for the declassification, according to criteria adopted by common agreement, of documents and records.

2. Delete

Justification

This article becomes redundant if the institutions are held to decide at the time of selection for the archives on exceptions from the principle of access as suggested with amendment 9.

Amendment 12
ARTICLE 1, PARAGRAPH 4

Article 6 (Regulation (EEC, Euratom) No 354/83)

4) Where a Member State receives a request for a document in its possession, originating from an institution, unless it is clear that the document must or must not be disclosed, 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.

4) Delete.

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

Justification

This article as modified repeats textually Article 5 of Regulation No 1049/2001 and is therefore redundant.

Amendment 13
ARTICLE 1, PARAGRAPH 5 (new)

Article 7 (Regulation (EEC, Euratom) No 354/83)

Each institution shall transfer to the historical archives all documents and records contained in their current archives no later than 15 years after their date of creation. According to the criteria laid down by each institution pursuant to Article 9, there shall be an initial sorting process with the purpose of separating documents and records that are to be preserved from those that have no ***administrative or*** historical value.

According to the criteria and procedures laid down by each institution pursuant to Article 9, there shall be a permanent sorting process with the purpose of separating documents and records that are to be preserved from those that have no historical value. ***Documents selected for permanent preservation in the historical archives are deposited in these archives at least once every calendar year taking the form of files.***

Justification

It does not make sense to transfer all documents within the meaning of the definition of Article 3 of Regulation No 1049/2001 "any content whatever its medium (written on paper or stored in electronic form...)" no later than 15 years to the historical archive. This would simply flood the archives with hundreds of thousands of mostly irrelevant texts.

What is important is that the selection of documents is done permanently and in accordance with the agreement with the European University Institute in Florence of 17 December 1984 as final depository of the historical archives.