

Jens-Peter Bonde

Transparency

2007

Transparency 2007

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Thanks to Klaus Heeger

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Introduction

On the 2nd of June 1992 the Danes very surprisingly voted no to the Maastricht Treaty. The no was welcomed with joy in the European media. The eurocrats in Bruxelles had deserved this punch.

At once Transparency, Proximity and Democracy was put on the European agenda. The French and the Dutch backed this with a "Non" and a "Nee" to the proposal for a Constitution in 2005. In France 55% voted no, in Holland it was 62%.

This has made it easier to progress with reforms. During my 28 years in the European Parliament, I have never witnessed so many victories before.

-  - We now know the names of 3000 secret working groups in the Commission and have consensus in the budgetary control committee to equally obtain the names of the experts in these working groups and a complete list of the recipients of the EU funds.
-  - Negotiations and votes on propositions of law as part of the common decision making procedure are in certain phases public.
-  - Half of the countries have made public the recipients of the agricultural funds and all countries must do the same from 2009.
-  - Every week, the Commission now sends proposals for law directly to the national parliaments who have been instructed to control them for proximity and necessity (subsidiarity and proportionality in EU slang).
-  - The European Affairs committee in the Danish parliament now delegates mandates to ministers, usually in public.
-  - An absolute majority in the European Parliament and a qualified majority in the Council of Ministers can now demand the many comitology cases reconsidered.
-  - We have been able to pass minimum rules regarding the climate destroying f-gases, which means Denmark and Austria can preserve their bans and we are still allowed to ban certain pesticides, that have been found in our drinking water.

These two victories are not pretty, seen from a legal point of view, but they show that a green majority in the European Parliament can save environmental standards.

The list of unsolved tasks is much longer, but we are on the right way to Transparency, Proximity and Democracy. The individual battles are elaborated in this small book and in "Mamma Mia!" to be found at www.bonde.com

Jens-Peter Bonde

Member of the European-Parliament for the Danish JuneMovement

President of the group for Independence and Democracy (IND/DEM)

THE EUROPEAN TRANSPARENCY INITIATIVE

- an overview in 14 points -

1. Transparency
2. New rules of procedures
3. Open meetings in the Council
4. Participants in the secret working groups
5. Regulatory committees (in the comitology)
6. Agendas and minutes of the working groups
7. Access to documents in the Council and the Commission
8. Rehabilitation of whistleblowers and better protection
9. Details of EU spending shall be made available for everyone on the internet
10. New rules for the Ombudsman
11. Better law making
12. Consolidation and simplification
13. Secret explanations of vote
14. Victories for transparency

1. Transparency

Never before have so many people called for transparency in the European Union.

It was the number one claim when a forum of 430 representative Danes met to discuss the "Citizens agenda" for the future of Europe.

It was the issue uniting most members of the European Convention.

The call for transparency is now completely uncontroversial in the European Parliament and the Danish Parliament.

We have fought and won major gains for transparency in the last years and months:

- From 6 October 2006 the Danish Parliaments European Committee have met in public to discuss legislative proposals
- From 15 September 2006 the European Commission have sent all proposals for new legislation to the national parliaments at the same time they send it to the European Parliament and the Council.
- The national parliaments can now react for lack of respect for the important principles of subsidiarity and proportionality thereby bringing the EU closer to its citizens.
- The Council have deliberations and votes on new laws in public. Debates can be followed on the internet.
- The European Commission now offer access to their telephone book, agendas and minutes of the Commission

meetings and have delivered a list of 3000 secret working groups.

- We can now see who gets what from the agricultural budgets in half of the member states, and all recipients will be public from 2009.

- The Commission have formally launched a new "European Transparency Initiative" in November 2005. A public hearing period has ended. The Commission has put forward concrete proposals - to improve the rules on access to information in regulation no 1049 from 2001

- establish a database for all advisory committees
- organise broad hearings for new legislative proposals in the member states
- establish a joint database for recipients of community funds and obligatory rules for the publication of EU support also in areas of shared administration with the member states
- increase the register of available EU documents
- introduce ethical rules for members and civil servants in all institutions
- change the OLAF rules to fight fraud
- establish a voluntary register for lobbyists

As a lonely life long fighter I should be a very happy man with all those reforms appearing for a person who was nicknamed Mr. Transparency for his permanent claims for more openness in the EU.

Particularly after the French and Dutch 'No's to the proposed Constitution most decision makers have realised they need to be seen as supporters of transparency.

BUT - the devil is in the detail. We will soon see there is still a big job to be done to show the citizens how their money is spend and how their laws are prepared and decided.

After all these splendid reforms...

- the vast majority of laws will still be prepared and decided by civil servants behind closed doors
- the lobbyists are not obliged to register which means that the nice ones will register and those we need to scrutinise will not
- the Commission reforms may fall in the Council because the Commission propose decisions by unanimity and qualified majority instead of using amendments to the internal regulations only needing simple majority.
- make all Meetings and documents open and transparent unless a derogation is decided by qualified majority

2. New rules of procedures

Transparency and access to documents are governed by the Nice treaty art. 255 TEC, by regulation no. 1049/2001 and by the rules of procedures for the different European institutions. To change the treaty unanimity is required among Member States. To change the regulation on transparency requires qualified majority in the Council. QMV is 255 of 345 possible votes from a majority of Member States representing at least 62 % of the population.

If 3 big nations as France, Germany and Great Britain with 29 votes, each vote against progress, there will be no qualified majority even if all other 24 governments should vote in favour of more transparency (because they have together 44% of the population). Remind the countries on their duties, but let us focus on the easy method:



Challenge: Change the internal rules of procedures in the Council (205.1, 207.3 TEC) and the Commission (219, 218.2).

Challenge: Change the internal rules of procedures in the Council (205.1, 207.3 TEC) and the Commission (219, 218.2). That can be done by simple majority. In the Council 14 Member States can overcome resistance from up to 13 Member States, independent of their size. In the Commission 14 of the 27 Commissioners can opt in favour of transparency.

The new rule should simply state that all meetings and documents are open and transparent unless a reasoned derogation is decided by qualified majority, e.g. 2/3 majority as in the rules of the European Parliament.

This simple proposal was also put forward by 200 members and substitute members of the Constitutional Convention. Every elected member from all national parliaments in 28 countries signed. (Turkey, Bulgaria and Romania took also part - and they all signed). All representatives from the European Parliament except one French socialist and 23 out of 28 government representatives signed as well. Only 20 out of 220 members and substitutes did not sign, among them the government representatives of France, Germany, UK, Denmark and the Netherlands.

The French representative Dominique de Villepin was foreign minister at the time and wanted to sign personally. He was not permitted to sign from his state secretary. Dominique de Villepin is now the Prime Minister of France and should be reminded of his support.

The German Foreign Minister Joschka Fischer wanted to sign, but was not permitted to sign by his helpers.

The British European minister Peter Hain wanted to sign, and was not allowed by his ministry civil servant.

The Dutch European minister Gijs de Vries - now the terror chief in the Council - tried several times to get the permission from his government, but with no success.

The Danish representative Henning Christophersen said he would support the proposal in the Presidium of the Convention. But in the end, he and his substitute Poul Schlüter both refused to sign. So in fact 22 of the 27 EU governments did sign such proposal. Only 14 are needed to decide it in the Council. But who will put it on the agenda? And when?

3. Open meetings in the Council

Today 70 % of all EU laws are de facto decided in 300 secret working groups in the Council. 15 % reach the next highest level of EU ambassadors in COREPER. Only the remaining 15 % of all EU laws are decided in veritable Council meetings.

When the Council votes on a topic, the vote and explanations of votes are public since 1993.

Since 1993 some Council meetings are held in public. Since the summit in Seville 21.-22nd June 2002, Council debates on acts adopted by co-decision with the European Parliament shall be open to the public during the initial and the final stages.

Our actual challenges: The European summit decided 15-16. June 2006 to open all council deliberations under the co-decision, but it does not cover the many decisions from the working groups. In 2005 the EU adopted 3124 laws - only 57 unique acts were adopted in co-decision with the European Parliament.



Challenge: The European summit decided 15-16. June 2006 to open all council deliberations under the co-decision, but it does not cover the many decisions from the working groups. In 2005 the EU adopted 3124 laws - only 57 unique acts were adopted in co-decision with the European Parliament.

All legislative meetings must be held in public. All votes and explanations of votes must be public for all topics. All working documents must be available at the internet to allow citizens to follow the legislative process.

There may be a possibility for secrecy when major legitimate interests are at stake. It may be negotiating mandates for international negotiations or ongoing investigations in fraud. Then, derogations may be decided by qualified majority (they of course would need a good explanation, subject to the scrutiny of the Ombudsman and the European Court).

4. Participants in the secret working groups

Today around 3000 secret working groups assist the Commission in the preparation and implementation of laws. But we don't know who the members of these working groups are. The Commission pays travel and daily allowances for the participants.



Challenge: We want to know who we pay to advise our civil servants in the European Commission. The technical solution is very cheap and simple: Add the name "European Parliament" to the e-post sent to participants in all working groups.

In theory the same persons could also receive reimbursements for more meetings the same week. We do not say it happens. We only say that we can't prove it does not happen. The European Parliament's budget control committee is not able to control such spending.

Therefore we cannot see either if the advice given to the Commission is broad and balanced. Is the Tobacco committee only representing tobacco producers? Why are health organisations not represented? Are employers, wage earners and consumers all represented in the different committees?

Challenge: We want to know who we pay to advise our civil servants in the European Commission. The technical solution is very cheap and simple: Add the name "European

Parliament" to the e-post sent to participants in all working groups.

5. Regulatory committees (in the comitology)

The European Parliament gained insight in the regulatory committees since 1994 with the so-called "Modus Vivendi". Agendas and minutes can now be found here: http://ec.europa.eu/comm/secretariat_general/regcomito/registre.cfm?CL=en & http://ec.europa.eu/comm/development/body/legislation/comitology_en.htm

Challenge: Make the information available on the internet. Revise the rules for regulatory committees so it will become possible to raise any topic at the political level in the Council by one of its members or by the European Parliament by simple majority.



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6. Agendas and minutes of the working groups

Challenge: Agendas could easily be made public for all working groups in all European institutions. Minutes could be made available on the internet as a general rule and accessible for the European Parliament. Reasoned derogations could be decided by qualified majority.



Challenge: All required documents shall be disclosed unless the concrete application or a general type is met with resistance from 2/3 of the Member States or 2/3 of the Members in the Commission within one week, in a written procedure.

7. Access to documents in the Council and the Commission

Today the Council and the Commission are still very restrictive in dealing with applications for access to documents from the citizens.

Challenge: All required documents shall be disclosed unless the concrete application or a general type is met with resistance from 2/3 of the Member States or 2/3 of the Members in the Commission within one week, in a written procedure.

All documents on spending and all bills shall be accessible for the Ombudsman, the Court of Auditors and the European Parliaments budget control committee.

Today those we think are controlling are in fact not able to control. The former leader of the Court of Auditors, Jan O. Karlsson, admitted in 2001 in the budget control committee that the EU auditors do not get the information they ask. The rules for the Ombudsman do not oblige the institutions to give him what he asks. The European Parliaments budget control committee has never been able to control all expenditures.

8. Rehabilitation of whistleblowers and better protection

When the Dutch born civil servant Paul van Buitenen blew the whistle on massive fraud he was immediately suspended and put at half salary. It was the European Parliament which in the end forced the Commission to take him back at full salary.

The Commission accepted because there were no clear rules for whistle blowing and it was not certain that they could win a court case. They then changed the rules - for the worse. It is now entirely clear that it is illegal for civil servants to deliver information on fraud to Court of Auditors, the Ombudsman, the European Parliaments president or budget control committee - or the police.

It is a criminal act for a civil servant to inform the police about fraud or mismanagement.

There are only two legal channels for whistle blowing: The hierarchy in the institution or OLAF, the so-called independent investigative unit for fraud. All other ways of informing are illegal, and the sanction is: You are sacked.

Challenge: Auditors, the Ombudsman, the budget control committee and the police shall not be seen as enemies, but as our servants. They shall be able to receive any information from all civil servants, and there shall be no sanctions against those who inform.

9. Details of EU spending shall be made available for everyone on the internet

Today fraud and waste still take too much of taxpayers contributions to the EU. There are no incentives for Member States to find the criminals because Member States themselves shall then reimburse.

Challenge: Make all EU spending public, so that all journalists and members of parliaments - but also every citizen- will catch the wrongdoings and fraud-masters.

If a person or company does not want to see his/her name as recipient of EU money, it is free not to apply for subsidies.



Challenge: Auditors, the Ombudsman, the budget control committee and the police shall not be seen as enemies, but as our servants.



Challenge: Make all EU spending public, so that all journalists and members of parliaments - but also every citizen- will catch the wrongdoings and fraud-masters.



Challenge:

The Ombudsman shall receive any document he requires, eventually under secrecy, so that there would be no need for a special procedure for derogations.

10. New rules for the Ombudsman

When the Ombudsman was set up in 1995 we lost the battle for full access to all documents in the institutions. According to the existing rules the European Commission can decide what they want to put under his control.

Challenge: The Ombudsman shall receive any document he requires, eventually under secrecy, so that there would be no need for a special procedure for derogations.

11. Better law making

Today the EU has passed 90.000 pages of law. We may have more than 20.000 pieces of legislative acts. We don't know the exact figures.

Every farmer is asked to count his sheep and cows, but the European institutions are not able to count their bulk of laws and administrative acts.



Challenge:

Do "less and better".

Alone in the cultural field we will find more than 350.000 projects partly financed by community funds.

Challenge: The EU should focus on cross frontier issues with a certain proofed extra European value (in the original sense of the subsidiarity principle). Do "less and better". Deliver high quality legislation after public hearings and more readings at regional, national and European level. No law to be decided without majority in a parliament.

12. Consolidation and simplification

Today the EU uses several directives and regulations to cover a single topic.

Challenge: All laws must be consolidated and simplified.



Challenge: All laws must be consolidated and simplified.

13. Secret explanations of vote

Until 2002 the Council often "legislated" partly through secret explanations and declarations annexed to the directive or regulation. In a public directive there should be at least 20 minutes between advertisements on commercial TV. In a secret declaration everyone confirmed that 20 minutes also could be read as 15 minutes!

Those with inside knowledge were better off than those without. In 2002 the Council finally accepted to abolish secret declarations when they adopt new laws. But there are still thousands of existing declarations still valid and used, and not known by the public, the EEA countries or the European parliament.

E.g. Norway can be bound by an interpretation of a law they never saw.

The European Court has never been bound to respect secret declarations. But if Member States and the Commission have agreed on a secret explanation, the Commission will not start an infringement procedure against a state acting in accordance with that secret declaration, even if against the published rules.



Challenge: All declarations must be published, scrutinised and abolished. Laws must eventually be changed from the front door, and all citizens must be equal for and have equal knowledge before and about the law.

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14. Victories for transparency

14.1) Negotiations in the Council

In June 2006 the European Council decided to open all deliberations in the Council under the co-decisions unless a simple majority decide a derogation find the decision here: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/presData/en/ec/90111.pdf

14.2) 3094 secret working groups in the European Commission

When the Barroso Commission started in 2004 they promised to publish a complete list of secret working groups. Researchers thought there were about 1000 working groups. The first list is not precise, but it contains 3094 working groups.

Find the list here: <http://www.bonde.com/index.phtml?download=true&fid=9029>

14.3) 1684 working groups active in 2004

In the electoral year 2004 1684 secret working groups in the Commission were active. Today there is 1237 mentioned and you can find the list here:

http://ec.europa.eu/secretariat_general/regexp/search.cfm?l=all

14.4) CAP spending in some countries

Until 2004 all spending in agriculture was secret. Then two Danish journalists succeeded in having public access to the recipients of CAP subsidies in Denmark. Since half of the member states have published figures, and all figures have to be revealed from 2009.

Find the recipients here: www.Farmsubsidy.org

14.5) Voting in the Council

Until 1993 the votings in the Council were secret. Now everyone can read the voting results in around 50 cases each year.

Here is some statistics on voting in council meetings:

http://register.consilium.europa.eu/servlet/driver?typ=Acts&ii_PUBLIC_DOC=%3E0&srm=25&md=100&ssf=DATE_DOCUMENT+DESC&lang=EN&fc=REGAISEN&ff_COTE_MATIERE_PRIM=public&cmsid=551&ff_TITRE=2006&rc=1&nr=4&page=Detail

14.5.1) Some public meetings in the Council

Until 1993 all meetings in the Council were secret. Now all presidencies establish a plan for public debates.

Here is some programmes for public Council meetings:

http://www.consilium.europa.eu/cms3_fo/showpage.asp?id=947&lang=en&mode=g

14.6) Commission agendas and minutes

Until 2002 all agendas for Commission meetings existed only in French, and they were secret. When the Prodi-Commission started in 1999 they promised public agendas and minutes. Find them here:

<http://ec.europa.eu/transparency/regdoc/registre.cfm?CL=en>

14.7) Commission telephone book

The Commissions internal telephone book has been a secret document for all years. Since 1997 the phone book is available through the IDEA database. Find it most easy through <http://euobserver.com/>

14.8) 300 secret working groups in the Council

Until 1999 the working groups in the Council was kept secret. Now the list is published by the Council. Find the last edition here:

<http://register.consilium.europa.eu/pdf/en/06/st08/st08605.en06.pdf>

14.9) Comitology-committees

Until 1999 the regulatory committees were secret land for elected members of parliaments and other citizens. Now the MEP's have a strong insight. Find the list here: <http://ec.europa.eu/transparency/regcomitology/registre.cfm?CL=en>

14.10) Secret explanations limited

Until 2002 the Council legislated partly through secret declarations, often opposing or changing the officially published law. This practise has not been used since. Eventually there are still some secret declarations in relation to international negotiations.

14.11) Open committee meetings in the European Parliament

Until 1999 most meetings in the European Parliaments committees were secret. Now all committee meetings are open unless a derogation is decided.

However, there are still no public access to meetings in the bureau and the conference of presidents and the many conciliation meetings where laws are decided with the Commission and the Council.

14.12) The Ombudsman

The European ombudsman was first elected in 1995 to support citizens and companies in their relations with the European institutions. <http://www.euro-ombudsman.eu.int>

Books on the fight for transparency

Jens-Peter Bonde: *Mamma Mia*, download it for free here:
<http://www.bonde.com/index.phtml?download=true&fid=6821>

Paul van Buitenen: *Blowing the Whistle*

Hans-Peter Martin: *At least they could want - An Inside View on Politics*

Hans-Martin Tillack: *Silenced: International Journalists Expose Media Censorship* (edt. David Dadge)

New Transparency Initiative

http://ec.europa.eu/commission_barroso/kallas/transparency_en.htm

Annex 1:

Applications for access to documents

Here are the links

http://www.europarl.europa.eu/registre/recherche/Aide/Guide_EN.pdf

<http://register.consilium.europa.eu/servlet/jsp/MailAccessPrivacy.jsp?&lang=en&cmsid=928>

Annex 2:

The most important laws, agreements, decisions, declarations and judgements on transparency

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A.5) Declaration on the right of access to information (no. 17) annexed to the Treaty of Maastricht

A.6) 41.Declaration annexed to the final Act of Amsterdam on the provisions relating to transparency, access to documents and the fight against fraud

B) Article 42 of the Charter of Fundamental Rights of the Union

C) Interinstitutional Agreement on Democracy, Transparency and subsidiarity

D) Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents

- E) (European Parliament's) Code of Good Administrative Behaviour
- F) European Parliament decision adapting its Rules of Procedure to the provisions of Regulation No 1049/2001
- G) European Parliament's Bureau Decision on public access to European Parliament documents
- H) Commission decision adapting its Rules of Procedure to the provisions of Regulation No 1049/2001
- I) Council Decision of 29 November July 2002 adapting its Rules of Procedure to the provisions of Regulation 1049/2001
- J) Joint Declaration of the European Parliament and the Council on public access to documents from agencies
- K) Interinstitutional Agreement concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy
- L) European Case Law
 - L.1) Court of First Instance
 - L.2) European Court of Justice

List of abbreviations:

- CFI Court of First Instance
- CFSP Common Foreign and Security Policy
- CSDP Common Security and Defence Policy
- EAEC European Atomic Energy Community =EURATOM
- EC European Community
- ECJ European Court of Justice
- ECSC European Coal and Steel Community
- EP European Parliament
- EU European Union
- IIA Interinstitutional Agreement
- JHA Justice and Home Affairs
- TEC Treaty establishing the European Community
- TEU Treaty on European Union

*Principles of the Union,
not only of the
Community:*

- openness
- closeness

*Openness =
Transparency of:*

- documents
- decision making
- structures
- treaties and law
- institutions
- competencies

*Closeness =
Respect of subsidiarity
(Preamble of TEU)*

*Access to documents is
a fundamental civil right
of Union citizens*

*General principles and
limits = Regulation
1049/2001*

*Rules of Procedure
adopted by each institu-
tion*

*General derogation for
Member States: essen-
tial interests of*

- security (Art. 296
TEC)
- authorship
(Declaration n° 35)

*General restriction on
behalf of data protection
= Art. 286 TEC, Art. 8 of
the Charter, Regulation
45/2001*

A.1) Article 1 Treaty on European Union (TEU)

By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called 'the Union'.

This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty. Its task shall be to organise, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.

A.2) Article 255 Treaty establishing the European Community (TEC)

1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3.

2. General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 251 within two years of the entry into force of the Treaty of Amsterdam.

3. Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents.

A.3) Article 28 Treaty on European Union (TEU)

1. Articles 189, 190, 196 to 199, 203, 204, 206 to 209, 213 to 219, 255 and 290 of the Treaty establishing the European Community shall apply to the provisions relating to the areas referred to in this Title.

Common Foreign and Security Policy (CFSP)

Principle of access to documents applies also in second pillar (Common Foreign and Security Policy -CFSP) - But see below restrictions e.g. in Inter-institutional Agreement (IIA) of 20/11/2002 concerning sensitive information

A.4) Article 41 Treaty on European Union (TEU)

1. Articles 189, 190, 195, 196 to 199, 203, 204, 205(3), 206 to 209, 213 to 219, 255 and 290 of the Treaty establishing the European Community shall apply to the provisions relating to the areas referred to in this Title.

Justice and Home Affairs (JHA)

Principle of access to documents applies also in 3rd pillar (JHA) - But see below restrictions e.g. in Inter-institutional Agreement (IIA) of 20/11/02 concerning sensitive information

A.5) Declaration on the right of access to information (no. 17) annexed to the Treaty of Maastricht

7 February 1992

The Conference considers that transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration. The Conference accordingly recommends that the Commission submit to the Council no later than 1993 a report on measures designed to improve public access to the information available to the institutions.

Declaration N° 17

Transparency strengthens democracy (Transparency principle has been inserted into the Treaty of Amsterdam (Art 255 TEC) and clarified by Regulation 1049/2001)

Declaration N° 41

Transparency and fight against fraud in the EAEC and ECSC: Provisions of the TEC apply

Charter

Although the Constitution has been rejected, the Charter which has been solemnly proclaimed may serve as a source of interpretation of Union law

1993 Inter-institutional Agreement

EP, Council, Commission: respect the democratic principles and reaffirm their attachment to transparency

A.6) 41. Declaration annexed to the final Act of Amsterdam on the provisions relating to transparency, access to documents and the fight against fraud
1 May 1999

The Conference considers that the European Parliament, the Council and the Commission, when they act in pursuance of the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community, should draw guidance from the provisions relating to transparency, access to documents and the fight against fraud in force within the framework of the Treaty establishing the European Community.

B) ARTICLE 42 of the Charter of Fundamental Rights of the Union as solemnly proclaimed in Nice on 20 December 2000

RIGHT OF ACCESS TO DOCUMENTS

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

C) INTERINSTITUTIONAL AGREEMENT on Democracy, Transparency and subsidiarity
25 October 1993

1. The European Parliament, the Council and the Commission, as Institutions of the European Union will, within the framework of the legislative procedure, respect in full the democratic principles on which the systems of government of the Member States are based and they reaffirm their

attachment to the implementation of transparency by the Institutions.

2. As soon as Parliament has adopted its resolution on the annual legislative programme proposed by the Commission, the Council will state its position on the programme in a declaration and undertake to implement as soon as possible the provisions to which it attaches priority, on the basis of formal Commission proposals and in compliance with the procedures laid down by the Treaties.

Annual legislative programme

3. In order to increase the transparency of the Community, the Institutions recall the measures which they have already taken in this direction:

In 1993 the institutions recalled the measures which they have taken so far

The European Parliament, in amending its Rules of Procedure on 15 September 1993, has confirmed the public nature of meetings of its Committees and of its plenary sittings.

The Council has agreed to take steps to:

Council's commitments:

- open some of its debates to the public;
- publish records and explanations of its voting;
- publish the common positions which it adopts under the procedures laid down in Articles 189b and 189c, and the statement of reasons accompanying them;
- improve information for the press and the public on its work and decisions;
- improve general information on its role and activities;
- simplify and consolidate Community legislation in co operation with the other Institutions;

- open some debates

- publish records, explanations and common positions

- simplify legislation

- provide access to archives

Commission's commitments:

- broader consultation

- notification procedure

- publication of work and legislative programmes

- provision of easier public access to documents

- improving knowledge of existence and use of databases

- provide access to its archives.

The Commission has already taken or is in the process of taking the following measures:

- wider consultations before presenting proposals, in particular publication of Green or White Papers on the topics listed in the 1993 legislative programme;
- flagging in the legislative programme of upcoming proposals which would appear to be suitable for wide ranging preliminary consultations;
- introduction of a notification procedure, consisting of the publication in the Official Journal of a brief summary of any measure planned by the Commission, with the setting of a deadline by which interested parties may submit their comments;
- publication of work programmes and legislative programmes in the Official Journal to publicize action planned by the Commission;
- finalization of the work programme by October with a view to enhancing openness;
- publication in the legislative programme of plans for the consolidation of Community legislation;
- provision of easier public access to documents held by the Commission with effect from 1 January 1994;
- improving knowledge of existing databases and their accessibility, including improving the existing relay network;
- publication each week in the Official Journal of lists of doc-

uments on general topics; wider public access to documents on specific topics;

- *publication in the OJ*

● preparation of an inter-institutional yearbook giving details of each institution's organization chart;

- *interinstitutional year-book*

● faster publication of Commission documents in all Community languages;

- *faster publication in all languages*

● adoption of a new information and communication policy occupying a larger place in Commission activities; enhanced coordination of information activities both inside and outside the Commission;

- *new information policy*

● adoption of additional measures to facilitate the general public's understanding of Commission business, in particular by making available the necessary resources and equipment to provide a suitable response to requests from the media;

- *additional measures to understand Commission*

● improvement in the treatment of telephone, mail and personal contacts between citizens and the Commission;

- *better telephone mail and personal contacts with EU citizens*

● promotion of the establishment of self-regulation by special interest groups by asking them to draft a code of conduct and a directory;

- *use of self-regulation*

● creation by the Commission of a database on special interest groups as an instrument for use by the general public and by Community officials.

Done at Luxembourg, 25 October 1993

D) 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

Reference to:

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

- Article 255 TEC

Having regard to the Treaty establishing the European Community, and in particular Article 255(2) thereof,

Having regard to the proposal from the Commission(1),

Acting in accordance with the procedure referred to in Article 251 of the Treaty(2),

Whereas:

- Article 1 TEU

(1) The second subparagraph of Article 1 of the Treaty on European Union enshrines the concept of openness, stating that the Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

- Openness

(2) Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system. Openness contributes to strengthening the principles of democracy and respect for fundamental rights as laid down in Article 6 of the EU Treaty and in the Charter of Fundamental Rights of the European Union.

- Conclusions of Birmingham, Edinburgh, Copenhagen

(3) The conclusions of the European Council meetings held at Birmingham, Edinburgh and Copenhagen stressed the

need to introduce greater transparency into the work of the Union institutions. This Regulation consolidates the initiatives that the institutions have already taken with a view to improving the transparency of the decision-making process.

(4) The purpose of this Regulation is to give the fullest possible effect to the right of public access to documents and to lay down the general principles and limits on such access in accordance with Article 255(2) of the EC Treaty.

*Purpose:
Give fullest possible
effect to the right of
public access to docu-
ments*

(5) Since the question of access to documents is not covered by provisions of the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community, the European Parliament, the Council and the Commission should, in accordance with Declaration No 41 attached to the Final Act of the Treaty of Amsterdam, draw guidance from this Regulation as regards documents concerning the activities covered by those two Treaties.

*Applies also for docu-
ments of ECSC and
EAEC*

(6) Wider access should be granted to documents in cases where the institutions are acting in their legislative capacity, including under delegated powers, while at the same time preserving the effectiveness of the institutions' decision-making process. Such documents should be made directly accessible to the greatest possible extent.

*Wider access in cases
of legislative activities*

(7) In accordance with Articles 28(1) and 41(1) of the EU Treaty, the right of access also applies to documents relating to the common foreign and security policy and to police and judicial cooperation in criminal matters. Each institution should respect its security rules.

*Right of access also
applies to 2nd and
3rd pillars*

(8) In order to ensure the full application of this Regulation to all activities of the Union, all agencies established by the institutions should apply the principles laid down in this Regulation.

*All agencies must apply
these principles*

Special treatment for highly sensitive documents

(9) On account of their highly sensitive content, certain documents should be given special treatment. Arrangements for informing the European Parliament of the content of such documents should be made through inter-institutional agreement.

Right of access to documents also apply to received documents, yet subject to Declaration 35 rules

(10) In order to bring about greater openness in the work of the institutions, access to documents should be granted by the European Parliament, the Council and the Commission not only to documents drawn up by the institutions, but also to documents received by them. In this context, it is recalled that Declaration No 35 attached to the Final Act of the Treaty of Amsterdam provides that a Member State may request the Commission or the Council not to communicate to third parties a document originating from that State without its prior agreement.

*Principle:
All documents*

(11) In principle, all documents of the institutions should be accessible to the public. However, certain public and private interests should be protected by way of exceptions. The institutions should be entitled to protect their internal consultations and deliberations where necessary to safeguard their ability to carry out their tasks. In assessing the exceptions, the institutions should take account of the principles in Community legislation concerning the protection of personal data, in all areas of Union activities.

*Exceptions:
- Internal consultations/
deliberations
- Protection personal data (Regulation EC 45/2001)*

Adaptation of the internal rules of the institutions (see below)

(12) All rules concerning access to documents of the institutions should be in conformity with this Regulation.

*Remedies:
- 2 stage administrative procedure
- Court proceedings
- Ombudsman*

(13) In order to ensure that the right of access is fully respected, a two-stage administrative procedure should apply, with the additional possibility of court proceedings or complaints to the Ombudsman.

(14) Each institution should take the measures necessary to inform the public of the new provisions in force and to train its staff to assist citizens exercising their rights under this Regulation. In order to make it easier for citizens to exercise their rights, each institution should provide access to a register of documents.

(15) Even though it is neither the object nor the effect of this Regulation to amend national legislation on access to documents, it is nevertheless clear that, by virtue of the principle of loyal cooperation which governs relations between the institutions and the Member States, Member States should take care not to hamper the proper application of this Regulation and should respect the security rules of the institutions.

*Principle of loyalty:
Member States should
not hinder the applica-
tion of the Regulation*

(16) This Regulation is without prejudice to existing rights of access to documents for Member States, judicial authorities or investigative bodies.

(17) In accordance with Article 255(3) of the EC Treaty, each institution lays down specific provisions regarding access to its documents in its rules of procedure. Council Decision 93/731/EC of 20 December 1993 on public access to Council documents(3), Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents(4), European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents(5), and the rules on confidentiality of Schengen documents should therefore, if necessary, be modified or be repealed,

*Repeal or modification
of the decisions on the
internal rules
(- Council Decision
93/731
- Commission Decision
94/90
- EP Decision 97/632)
(Adaptation of the inter-
nal rules of the institu-
tions (see below))*

Purpose:

To define principles of right of access to documents (Art. 255 TEC)

To ensure best exercise of this right

To promote good administration

Beneficiaries:

*- Citizens of the Union
- Natural or legal person residing in a Member State*

Access may be granted to others

Application to all documents

Article 1 Purpose

The purpose of this Regulation is:

(a) to define the principles, conditions and limits on grounds of public or private interest governing the right of access to European Parliament, Council and Commission (hereinafter referred to as "the institutions") documents provided for in Article 255 of the EC Treaty in such a way as to ensure the widest possible access to documents,

(b) to establish rules ensuring the easiest possible exercise of this right, and

(c) to promote good administrative practice on access to documents.

Article 2 Beneficiaries and scope

1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.

2. The institutions may, subject to the same principles, conditions and limits, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.

3. This Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union.

*Access either following
a written application or
electronic form or
register*

4. Without prejudice to Articles 4 and 9, documents shall be made accessible to the public either following a written application or directly in electronic form or through a register. In particular, documents drawn up or received in the course of a legislative procedure shall be made directly accessible in accordance with Article 12.

5. *Sensitive documents* as defined in Article 9(1) shall be subject to special treatment in accordance with that Article.

Sensitive documents

6. This Regulation shall be without prejudice to rights of public access to documents held by the institutions which might follow from instruments of international law or acts of the institutions implementing them.

Article 3

Definitions

For the purpose of this Regulation:

Definition of

(a) "document" shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility;

Document

(b) "third party" shall mean any natural or legal person, or any entity outside the institution concerned, including the Member States, other Community or non-Community institutions and bodies and third countries.

Third party

Exceptions:

5 groups of Exceptions:

1. Group
Public interest

- *privacy of individuals*
(= *data protection*)

2. Group
Commercial interests,
intellectual property,
court proceedings,
inspection, investigations
and audit

3. Group
Documents for internal
use, when disclosure
could undermine deci-
sion-making process

Article 4 Exceptions

1. The institutions shall refuse access to a document where disclosure would undermine the protection of:

(a) the public interest as regards:

- public security,
- defence and military matters,
- international relations,
- the financial, monetary or economic policy of the Community or a Member State;

(b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

2. The institutions shall refuse access to a document where disclosure would undermine the protection of:

- commercial interests of a natural or legal person, including intellectual property,
- court proceedings and legal advice,
- the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.

3. Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision

has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

4. As regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed.

*4. Group
Third-party documents
(authorship rule)*

5. A Member State may request the institution not to disclose a document originating from that Member State without its prior agreement.

*5. Group
Document from a
Member State*

6. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.

*Principle of partial
access (see e.g. cases
T-14-98, T-188-98, T-
304-99)*

7. The exceptions as laid down in paragraphs 1 to 3 shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. In the case of documents covered by the exceptions relating to privacy or commercial interests and in the case of sensitive documents, the exceptions may, if necessary, continue to apply after this period.

*Exceptions apply for a
period of 30 years*

Article 5

Documents in the Member States

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

*Documents originating
from the institutions in
the possession of a
Member State =
Member State must
consult institution*

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

Article 6 Applications

Applications shall be:

- written
- sufficiently precise

*Applicant is not obliged
to state reasons*

1. Applications for access to a document shall be made in any written form, including electronic form, in one of the languages referred to in Article 314 of the EC Treaty and in a sufficiently precise manner to enable the institution to identify the document. The applicant is not obliged to state reasons for the application.

2. If an application is not sufficiently precise, the institution shall ask the applicant to clarify the application and shall assist the applicant in doing so, for example, by providing information on the use of the public registers of documents.

3. In the event of an application relating to a very long document or to a very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution.

*Principle of general
assistance*

4. The institutions shall provide information and assistance to citizens on how and where applications for access to documents can be made.

Article 7 Processing of initial applications

*Initial applications must
be:*

- handled promptly
- granted or answered
within 15 working days

1. An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. Within 15 working days from registration of the application, the institution shall either grant access to the

document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal and inform the applicant of his or her right to make a confirmatory application in accordance with paragraph 2 of this Article.

2. In the event of a total or partial refusal, the applicant may, within 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.

In case of refusal, applicant may make a confirmatory application within 15 days

3. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time-limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

Extension of time-limits in exceptional cases

4. Failure by the institution to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.

No reply = refusal (obligation to reply inserted into the TEC through the Treaty of Amsterdam, - Art. 21.3)

Article 8

Processing of confirmatory applications

1. A confirmatory application shall be handled promptly. Within 15 working days from registration of such an application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal. In the event of a total or partial refusal, the institution shall inform the applicant of the remedies open to him or her, namely instituting court proceedings against the institution and/or making a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively.

*Confirmatory applications:
- must be handled promptly
- within 15 working days reply*

*In case of refusal, applicant must be informed of the remedies:
- Court proceedings
- Complaint to Ombudsman*

*Extension of time-limits
in exceptional cases*

*No reply =
refusal =
Entitles to:
- Court proceedings
- Complaints to
Ombudsman
(Since Treaty of
Amsterdam obligation
to reply: Art. 21(3) TEC)*

*Sensitive documents
classified as "très
secret/top secret",
"secret" or "confidential"*

*Access to sensitive
documents only those
with a right to*

2. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

3. Failure by the institution to reply within the prescribed time limit shall be considered as a negative reply and entitle the applicant to institute court proceedings against the institution and/or make a complaint to the Ombudsman, under the relevant provisions of the EC Treaty.

Article 9

Treatment of sensitive documents

1. Sensitive documents are documents originating from the institutions or the agencies established by them, from Member States, third countries or International Organisations, classified as "TRÈS SECRET/TOP SECRET", "SECRET" or "CONFIDENTIEL" in accordance with the rules of the institution concerned, which protect essential interests of the European Union or of one or more of its Member States in the areas covered by Article 4(1)(a), notably public security, defence and military matters.

2. Applications for access to sensitive documents under the procedures laid down in Articles 7 and 8 shall be handled only by those persons who have a right to acquaint themselves with those documents. These persons shall also, without prejudice to Article 11(2), assess which references to sensitive documents could be made in the public register.

3. Sensitive documents shall be recorded in the register or released only with the consent of the originator.

*Documents only
released with consent
of originator*

4. An institution which decides to refuse access to a sensitive document shall give the reasons for its decision in a manner which does not harm the interests protected in Article 4.

*Refusal of access must
state reason*

5. Member States shall take appropriate measures to ensure that when handling applications for sensitive documents the principles in this Article and Article 4 are respected.

6. The rules of the institutions concerning sensitive documents shall be made public.

7. The Commission and the Council shall inform the European Parliament regarding sensitive documents in accordance with arrangements agreed between the institutions.

*Commission and
Council shall inform EP
about sensitive
documents*

Article 10

Access following an application

Definition of Access

1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, including, where available, an electronic copy, according to the applicant's preference. The cost of producing and sending copies may be charged to the applicant. This charge shall not exceed the real cost of producing and sending the copies. Consultation on the spot, copies of less than 20 A4 pages and direct access in electronic form or through the register shall be free of charge.

*- On the spot
consultation*

- Receiving a copy

*(Applicant may be
charged)*

2. If a document has already been released by the institution concerned and is easily accessible to the applicant, the institution may fulfil its obligation of granting access to documents

*- Institution may simply
inform the applicant
how to obtain document*

- Document only to be supplied in available format

Each institution shall provide public access to a register of documents

Referencing shall be made in a manner that does not undermine the interests of Article 4

Registers operational by 3 June 2002

Documents accessible to the public in electronic-form

by informing the applicant how to obtain the requested document.

3. Documents shall be supplied in an existing version and format (including electronically or in an alternative format such as Braille, large print or tape) with full regard to the applicant's preference.

Article 11 Registers

1. To make citizens' rights under this Regulation effective, each institution shall provide public access to a register of documents. Access to the register should be provided in electronic form. References to documents shall be recorded in the register without delay.

2. For each document the register shall contain a reference number (including, where applicable, the interinstitutional reference), the subject matter and/or a short description of the content of the document and the date on which it was received or drawn up and recorded in the register. References shall be made in a manner which does not undermine protection of the interests in Article 4.

3. The institutions shall immediately take the measures necessary to establish a register which shall be operational by 3 June 2002.

Article 12 Direct access in electronic form or through a register

1. The institutions shall as far as possible make documents directly accessible to the public in electronic form or through

a register in accordance with the rules of the institution concerned.

2. In particular, legislative documents, that is to say, documents drawn up or received in the course of procedures for the adoption of acts which are legally binding in or for the Member States, should, subject to Articles 4 and 9, be made directly accessible.

*Legislative documents
directly accessible*

3. Where possible, other documents, notably documents relating to the development of policy or strategy, should be made directly accessible.

*Policy or strategy
documents made
directly accessible*

4. Where direct access is not given through the register, the register shall as far as possible indicate where the document is located.

*Register shall indicate
where document is
located*

Article 13

Publications in the Official Journal

1. In addition to the acts referred to in Article 254(1) and (2) of the EC Treaty and the first paragraph of Article 163 of the Euratom Treaty, the following documents shall, subject to Articles 4 and 9 of this Regulation, be published in the Official Journal:

*Following documents
shall be published in the
Official Journal:*

(a) Commission proposals;

- Commission proposals

(b) common positions adopted by the Council in accordance with the procedures referred to in Articles 251 and 252 of the EC Treaty and the reasons underlying those common positions, as well as the European Parliament's positions in these procedures;

*- Common positions of
Council*

(c) framework decisions and decisions referred to in Article 34(2) of the EU Treaty;

*- Union framework deci-
sions*

- *JHA conventions*

(d) conventions established by the Council in accordance with Article 34(2) of the EU Treaty;

- *Bilateral agreements*

(e) conventions signed between Member States on the basis of Article 293 of the EC Treaty;

- *All other international agreements*

(f) international agreements concluded by the Community or in accordance with Article 24 of the EU Treaty.

Following documents shall - as far as possible - be published

2. As far as possible, the following documents shall be published in the Official Journal:

Justice and Home Affairs (JHA) initiatives

(a) initiatives presented to the Council by a Member State pursuant to Article 67(1) of the EC Treaty or pursuant to Article 34(2) of the EU Treaty;

Justice and Home Affairs (JHA) common positions

(b) common positions referred to in Article 34(2) of the EU Treaty;

- *Other directives (e.g. Commission directives in Art.86.3 TEC)*
- *Decisions*
- *Recommendations and opinions*

(c) directives other than those referred to in Article 254(1) and (2) of the EC Treaty, decisions other than those referred to in Article 254(1) of the EC Treaty, recommendations and opinions.

Rules and procedures established by each institution

3. Each institution may in its rules of procedure establish which further documents shall be published in the Official Journal.

Article 14 Information

Information of the public of their rights

1. Each institution shall take the requisite measures to inform the public of the rights they enjoy under this Regulation.

2. The Member States shall cooperate with the institutions in providing information to the citizens.

Member States shall cooperate in providing citizens with access to docs

Article 15

Administrative practise in the institutions

1. The institutions shall develop good administrative practices in order to facilitate the exercise of the right of access guaranteed by this Regulation.

Developing good administrative practices to facilitate right of access

2. The institutions shall establish an inter-institutional committee to examine best practice, address possible conflicts and discuss future developments on public access to documents.

Establish a committee to find best practices

Article 16

Reproduction of documents

This Regulation shall be without prejudice to any existing rules on copyright which may limit a third party's right to reproduce or exploit released documents.

No prejudice to existing rules

Article 17

Reports

1. Each institution shall publish annually a report for the preceding year including the number of cases in which the institution refused to grant access to documents, the reasons for such refusals and the number of sensitive documents not recorded in the register.

Annual report

2. At the latest by 31 January 2004, the Commission shall publish a report on the implementation of the principles of this Regulation and shall make recommendations, including, if

Commission must publish a report by 31 January 2004

appropriate, proposals for the revision of this Regulation and an action programme of measures to be taken by the institutions.

Article 18

Application measures

Adapt rules to the provisions of this regulation

1. Each institution shall adapt its rules of procedure to the provisions of this Regulation. The adaptations shall take effect from 3 December 2001.

Within six months of entry of Regulation Commission shall examine conformity

2. Within six months of the entry into force of this Regulation, the Commission shall 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(6) with this Regulation in order to ensure the preservation and archiving of documents to the fullest extent possible.

3. Within six months of the entry into force of this Regulation, the Commission shall examine the conformity of the existing rules on access to documents with this Regulation.

Article 19

Entry into force

Regulation applicable from 3 December 2001

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 3 December 2001.

This Regulation shall be binding in its entirety and directly

applicable in all Member States.

Done at Brussels, 30 May 2001.

For the European Parliament
The President
N. Fontaine

For the Council
The President
B. Lejon

**E) (European Parliament's)
Code of Good Administrative Behaviour
adopted by the European Parliament
on 6 December 2001**

*Code of Good
Administrative
Behaviour*

*EP wished that it would
apply to all institutions.
However, Council and
Commission have
adopted their own
codes*

The Code approved by the European Parliament contains the following substantive provisions:

**ARTICLE 1
GENERAL PROVISION**

In their relations with the public, the Institutions and their officials shall respect the principles which are laid down in this Code of good administrative behaviour, hereafter referred to as "the Code".

*Institutions will relate to
the public according to
the "Code"*

**ARTICLE 2
PERSONAL SCOPE OF APPLICATION**

1. The Code shall apply to all officials and other servants to whom the Staff Regulations and the Conditions of employment of other servants apply, in their relations with the public. Hereafter the term official refers to both the officials and the other servants.

*- Code shall apply to all
officials and their
servants*

- Institutions will take the necessary measures to ensure that the provisions also apply to those working for them

- 'Public' refers to natural and legal persons

- Code contains the general principles for 'good administrative behaviour'

- Code does not apply to relations between the Institution and its officials

Officials shall act according to the law

2. The Institutions and their administrations will take the necessary measures to ensure that the provisions set out in this Code also apply to other persons working for them, such as persons employed under private law contracts, experts on secondment from national civil services and trainees.

3. The public refers to natural and legal persons, whether they reside or have their registered office in a Member State or not.

4. For the purpose of this Code:

(a) the term "Institution" shall mean a Community institution or body;

(b) "Official" shall mean an official or other servant of the European Communities.

ARTICLE 3

MATERIAL SCOPE OF APPLICATION

1. This Code contains the general principles of good administrative behaviour which apply to all relations of the Institutions and their administrations with the public, unless they are governed by specific provisions.

2. The principles set out in this Code do not apply to the relations between the Institution and its officials. Those relations are governed by the Staff Regulations.

ARTICLE 4

LAWFULNESS

The official shall act according to law and apply the rules and procedures laid down in Community legislation. The official shall in particular take care that decisions which affect the rights or interests of individuals have a basis in law and that their content complies with the law.

ARTICLE 5 ABSENCE OF DISCRIMINATION

1. In dealing with requests from the public and in taking decisions, the official shall ensure that the principle of equality of treatment is respected. Members of the public who are in the same situation shall be treated in a similar manner.

- Principle of equality of treatment must be respected

2. If any difference in treatment is made, the official shall ensure that it is justified by the objective relevant features of the particular case.

- Justification of non-equality of treatment

3. The official shall in particular avoid any unjustified discrimination between members of the public based on nationality, sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation.

- Unjustified discrimination (catalogue of Art. 13 TEC)

ARTICLE 6 PROPORTIONALITY

1. When taking decisions, the official shall ensure that the measures taken are proportional to the aim pursued. The official shall in particular avoid restricting the rights of the citizens or imposing charges on them, when those restrictions or charges are not in a reasonable relation with the purpose of the action pursued.

- Officials shall ensure proportional means

2. When taking decisions, the official shall respect the fair balance between the interests of private persons and the general public interest.

- Officials shall respect the fair balance between the interests of private persons and the public interest

Principle of conferral

ARTICLE 7 ABSENCE OF ABUSE OF POWER

Powers shall be exercised solely for the purposes for which they have been conferred by the relevant provisions. The official shall in particular avoid using those powers for purposes which have no basis in the law or which are not motivated by any public interest.

- Officials shall be impartial and independent

- Officials shall never be guided by personal interest or by political pressure

- Officials shall take into consideration the relevant factors

- Officials shall be consistent in his own administrative behaviour

ARTICLE 8 IMPARTIALITY AND INDEPENDENCE

1. The official shall be impartial and independent. The official shall abstain from any arbitrary action adversely affecting members of the public, as well as from any preferential treatment on any grounds whatsoever.

2. The conduct of the official shall never be guided by personal, family or national interest or by political pressure. The official shall not take part in a decision in which he or she, or any close member of his or her family, has a financial interest.

ARTICLE 9 OBJECTIVITY

When taking decisions, the official shall take into consideration the relevant factors and give each of them its proper weight in the decision, whilst excluding any irrelevant element from consideration.

ARTICLE 10 LEGITIMATE EXPECTATIONS, CONSISTENCY AND ADVICE

1. The official shall be consistent in his own administrative behaviour as well as with the administrative action of the Institution. The official shall follow the Institution's normal administrative practices, unless there are legitimate grounds

for departing from those practices in an individual case; these grounds shall be recorded in writing.

2. The official shall respect the legitimate and reasonable expectations that members of the public have in the light of how the Institution has acted in the past.

- Officials shall respect the reasonable expectations of the public

3. The official shall, where necessary, advise the public on how a matter which comes within his or her remit is to be pursued and how to proceed in dealing with the matter.

- Officials shall advise the public

ARTICLE 11 FAIRNESS

The official shall act impartially, fairly and reasonably.

Fairness

ARTICLE 12 COURTESY

1. The official shall be service-minded, correct, courteous and accessible in relations with the public. When answering correspondence, telephone calls and e-mails, the official shall try to be as helpful as possible and shall reply as completely and accurately as possible to questions which are asked.

Official shall be
- service-minded,
- correct,
-courteous,
- accessible

2. If the official is not responsible for the matter concerned, he shall direct the citizen to the appropriate official.

3. If an error occurs which negatively affects the rights or interests of a member of the public, the official shall apologise for it and endeavour to correct the negative effects resulting from his or her error in the most expedient way and inform the member of the public of any rights of appeal in accordance with Article 19 of the Code.

- Officials shall apologize for any errors

Replies

Response languages must be the same as the inquiries'

- All inquiries receive receipt acknowledgement within 2 weeks

- Reply will indicate the telephone number of the official

- Abusive letters

- Letters to the wrong service will be transferred

ARTICLE 13 REPLY TO LETTERS IN THE LANGUAGE OF THE CITIZEN

The official shall ensure that every citizen of the Union or any member of the public who writes to the Institution in one of the Treaty languages receives an answer in the same language. The same shall apply as far as possible to legal persons such as associations (NGOs) and companies.

ARTICLE 14 ACKNOWLEDGEMENT OF RECEIPT AND INDICATION OF THE COMPETENT OFFICIAL

1. Every letter or complaint to the Institution shall receive an acknowledgement of receipt within a period of two weeks, except if a substantive reply can be sent within that period.

2. The reply or acknowledgement of receipt shall indicate the name and the telephone number of the official who is dealing with the matter, as well as the service to which he or she belongs.

3. No acknowledgement of receipt and no reply need be sent in cases where letters or complaints are abusive because of their excessive number or because of their repetitive or point-less character.

ARTICLE 15 OBLIGATION TO TRANSFER TO THE COMPETENT SERVICE OF THE INSTITUTION

1. If a letter or a complaint to the Institution is addressed or transmitted to a Directorate General, Directorate or Unit which has no competence to deal with it, its services shall ensure that the file is transferred without delay to the competent service of the Institution.

2. The service which originally received the letter or complaint shall notify the author of this transfer and shall indicate the name and the telephone number of the official to whom the file has been passed.

- Authors get informed

3. The official shall alert the member of the public or organization to any errors or omissions in documents and provide an opportunity to rectify them.

- Officials shall alert the public to any errors of omissions in documents

ARTICLE 16 RIGHT TO BE HEARD AND TO MAKE STATEMENTS

1. In cases where the rights or interests of individuals are involved, the official shall ensure that, at every stage in the decision making procedure, the rights of defence are respected.

- Officials shall ensure that the rights of defence are respected

2. Every member of the public shall have the right, in cases where a decision affecting his rights or interests has to be taken, to submit written comments and, when needed, to present oral observations before the decision is taken.

- Written comments and oral observations before decision is taken

ARTICLE 17 REASONABLE TIME-LIMIT FOR TAKING DECISIONS

1. The official shall ensure that a decision on every request or complaint to the Institution is taken within a reasonable time-limit, without delay, and in any case no later than two months from the date of receipt. The same rule shall apply for answering letters from members of the public and for answers to administrative notes which the official has sent to his superiors requesting instructions regarding the decisions to be taken.

- Officials shall make decisions within a reasonable time limit, no later than 2 months

2. If a request or a complaint to the Institution cannot, because of the complexity of the matters which it raises, be

- Official shall inform author of decision as soon as possible

decided upon within the above mentioned time-limit, the official shall inform the author thereof as soon as possible. In that case, a definitive decision should be notified to the author in the shortest time.

ARTICLE 18 DUTY TO STATE THE GROUNDS OF DECISIONS

- Decisions of affecting a private citizen must state the grounds

1. Every decision of the Institution which may adversely affect the rights or interests of a private person shall state the grounds on which it is based by indicating clearly the relevant facts and the legal basis of the decision.

- No vague grounds

2. The official shall avoid making decisions which are based on brief or vague grounds or which do not contain individual reasoning.

- Official may guarantee reasoning for a decision

3. If it is not possible, because of the large number of persons concerned by similar decisions, to communicate in detail the grounds of the decision and where standard replies are therefore made, the official shall guarantee that he subsequently provides the citizen who expressly requests it with an individual reasoning.

ARTICLE 19 INDICATION OF THE POSSIBILITIES OF APPEAL

- Indication of appeal possibilities

1. A decision of the Institution which may adversely affect the rights or interests of a private person shall contain an indication of the appeal possibilities available for challenging the decision. It shall in particular indicate the nature of the remedies, the bodies before which they can be exercised, as well as the time-limits for exercising them.

- Decisions must mention the possibility of judicial proceedings and complaints to the Ombudsman

2. Decisions shall in particular refer to the possibility of judicial proceedings and complaints to the Ombudsman under

the conditions specified in, respectively, Articles 230 and 195 of the Treaty establishing the European Community.

ARTICLE 20 NOTIFICATION OF THE DECISION

1. The official shall ensure that decisions which affect the rights or interests of individual persons are notified in writing, as soon as the decision has been taken, to the person or persons concerned.

- Decisions which affect individual persons are notified in writing

2. The official shall abstain from communicating the decision to other sources until the person or persons concerned have been informed.

- Affected persons is the first to know

ARTICLE 21 DATA PROTECTION

1. The official who deals with personal data concerning a citizen shall respect the privacy and the integrity of the individual in accordance with the provisions of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

- Respect of the privacy of the individual

2. The official shall in particular avoid processing personal data for nonlegitimate purposes or the transmission of such data to non authorised persons.

- Avoidance of processing personal data for non-legitimate purposes

ARTICLE 22 REQUESTS FOR INFORMATION

- Information of the public on request

1. The official shall, when he has responsibility for the matter concerned, provide members of the public with the information that they request. When appropriate, the official shall give advice on how to initiate an administrative procedure within his field of competence. The official shall take care that the information communicated is clear and understandable.

- Asking for written request

2. If an oral request for information is too complicated or too comprehensive to be dealt with, the official shall advise the person concerned to formulate his demand in writing.

- Reasons for non-disclosure

3. If, because of its confidentiality, an official may not disclose the information requested, he or she shall, in accordance with Article 18 of this Code, indicate to the person concerned the reasons why he cannot communicate the information.

- Officials shall direct citizens to correct official for information

4. Further to requests for information on matters for which he has no responsibility, the official shall direct the requester to the competent person and indicate his name and telephone number. Further to requests for information concerning another Community institution or body, the official shall direct the requester to that institution or body.

5. Where appropriate, the official shall, depending on the subject of the request, direct the person seeking information to the service of the Institution responsible for providing information to the public.

ARTICLE 23

REQUESTS FOR PUBLIC ACCESS TO DOCUMENTS

1. The official shall deal with requests for access to documents in accordance with the rules adopted by the Institution and in accordance with the general principles and limits laid down in Regulation (EC) No 1049/2001.

2. If the official cannot comply with an oral request for access to documents, the citizen shall be advised to formulate it in writing.

- Citizens shall be advised to submit request in written form

ARTICLE 24

KEEPING OF ADEQUATE RECORDS

The Institution's departments shall keep adequate records of their incoming and outgoing mail, of the documents they receive, and of the measures they take.

Adequate records

ARTICLE 25

PUBLICITY FOR THE CODE

1. The Institution shall take effective measures to inform the public of the rights they enjoy under this Code. If possible, it shall make the text available in electronic form on its website.

Information of the public

2. The Commission shall, on behalf of all institutions, publish and distribute the Code to citizens in the form of a brochure.

ARTICLE 26

RIGHT TO COMPLAIN TO THE EUROPEAN OMBUDSMAN

Any failure of an Institution or official to comply with the principles set out in this Code may be the subject of a complaint to the European Ombudsman in accordance with Article 195 of the Treaty establishing the European Community and the Statute of the European Ombudsman.

Failure to comply with the Code: complaint to the European Ombudsman

*Review of the
implementation
after 2 years*

*EP Decision to adapt its
rules of procedures in
accordance with the
requirements of
Regulation 1049/2001*

*See below, not above,
for the amendments*

ARTICLE 27 REVIEW OF OPERATION

Each Institution shall review its implementation of the Code after two years of operation and shall inform the European Ombudsman of the results of its review.

F) European Parliament decision adapting its Rules of Procedure to the provisions of European Parliament and Council

Regulation (EC) No 1049/2001 on public access to Parliament, Council and Commission documents 13 November 2001

The European Parliament,

- having regard to the letter of 29 June 2001 from its President,

- having regard to Article 255 of the EC Treaty, Articles 28(1) and 41(1) of the EU Treaty and Articles 42 and 52(2) of the Charter of Fundamental Rights of the European Union,

- having regard to Rule 181 of its Rules of Procedure,

- having regard to the report of the Committee on Constitutional Affairs and the opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0349/2001),

1. Decides to amend its Rules of Procedure as indicated above;

2. Decides to revoke the Bureau decisions of 10 July 1997 on public access to Parliament documents and of 17 April 1998 on fees to be paid for delivery of very large documents;

3. Instructs its President to forward this decision to the Council and Commission, for information

Amendments of the Rules of Procedure of the European Parliament by decision A5-0349/2001 (OJ C140 E/116) to comply with Regulation 1049/2001

New Rules of procedure of the EP

Rule 28 : Accountability of the Bureau and the Conference of Presidents

1. The minutes of the Bureau and the Conference of Presidents shall be translated into the official languages, printed and distributed to all members of Parliament and shall be accessible to the public, unless the Bureau or the Conference of Presidents exceptionally, for reasons of confidentiality, as laid down in Article 4(1) to (4) of European Parliament and Council Regulation (EC) No 1049/2001, decides otherwise with regard to certain items of the minutes.

Rule 28: Accountability of the Bureau and the Conference of Presidents

2. Any Member may ask questions related to the work of the Bureau, the Conference of Presidents and the Quaestors. Such questions shall be submitted to the President in writing and published in the Bulletin of Parliament within thirty days of tabling, together with the answers given.

Rule 171 (now 96) : Transparency of Parliament's activities

1. Parliament shall ensure the utmost transparency of its activities, in line with the provisions of Articles 1, 3, second paragraph, 28(1) and 41(1) of the EU Treaty, Article 255 of the EC Treaty and Article 42 of the Charter of Fundamental Rights of the European Union.

Rule 96: Transparency of activities

2. Debates in Parliament shall be public.

3. Committees shall normally meet in public. They may decide, however, at the latest when the agenda of a meeting is adopted, to divide the agenda for that meeting into items open to the public and items closed to the public. However, if a meeting is held in camera, the committee may, subject to Article 4(1) to (4) of European Parliament and Council Regulation (EC) No 1049/2001, open documents and minutes from the meeting to public access.

4. Consideration by the committee responsible of requests relating to procedures on immunity pursuant to Rule 7 shall always take place in camera.

Rule 172 (now 97): Public access to documents

Rule 97: Access to documents

1. Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has a right of access to Parliament documents in conformity with Article 255 of the EC Treaty, subject to the principles, conditions and limits laid down in European Parliament and Council Regulation (EC) No 1049/2001 and pursuant to the specific provisions contained in these Rules of Procedure. Access to Parliament documents shall as far as possible be granted to other natural or legal persons in the same way. Regulation (EC) No 1049/2001 shall be published for information alongside the Rules of Procedure.

2. For the purposes of access to documents, the expression 'Parliament documents' means any content within the meaning of Article 3(a) of Regulation (EC) No 1049/2001 which has been drawn up or received by Officers of Parliament within the meaning of Title I, Chapter 2, of these Rules,

Parliament's governing bodies, committees or interparliamentary delegations, or by Parliament's Secretariat.

Documents drawn up by individual Members or political groups are Parliament documents for the purposes of access to documents if they are tabled under the Rules of Procedure.

The Bureau shall lay down rules to ensure that all Parliament documents are recorded.

3. Parliament shall establish a register of Parliament documents. Legislative documents and other documents as indicated in an Annex to these Rules shall, in accordance with Regulation (EC) No 1049/2001, be made directly accessible through the register. References for other Parliament documents shall as far as possible be included in the register.

Categories of documents which are directly accessible shall be set out in a list adopted by Parliament and annexed to these Rules(2). This list shall not restrict the right of access to documents not falling under the categories listed.

Parliament documents which are not directly accessible through the register shall be made available on written application.

The Bureau may adopt rules, in conformity with Regulation (EC) No 1049/2001, laying down arrangements for access which shall be published in the Official Journal of the European Communities.

4. The Bureau shall determine the authorities in charge of handling initial applications (Article 7 of Regulation (EC) No 1049/2001) and shall adopt decisions on confirmatory applications (Article 8 of the Regulation) and applications for sensitive documents (Article 9 of the Regulation).

5. The Conference of Presidents shall designate Parliament's representatives on the interinstitutional committee established pursuant to Article 15(2) of Regulation (EC) No 1049/2001.

6. One of the Vice-Presidents shall be responsible for supervising the handling of applications for access to documents.

7. Parliament's committee responsible shall, on the basis of information provided by the Bureau and other sources, prepare the annual report referred to in Article 17 of Regulation (EC) No 1049/2001 and submit it to the plenary.

The committee responsible shall also examine and evaluate the reports adopted by the other institutions and agencies pursuant to Article 17 of the Regulation.

Annex VII, paragraph 1

*Annex VII:
Confidential documents*

1. When information or documents are communicated to Parliament under cover of confidentiality, the chairman of the committee responsible shall automatically apply the confidential procedure laid down in paragraph 3 below.

1. Confidential documents shall mean documents and information to which public access may be refused in accordance with Article 4 of European Parliament and Council Regulation (EC) No 1049/2001 and shall include sensitive documents as defined in Article 9 of that Regulation. Where the confidential nature of documents received by the Parliament is questioned by one of the institutions, the matter shall be referred to the interinstitutional committee established pursuant to Article 15(2) of Regulation (EC) No 1049/2001.

When confidential documents are communicated to

Parliament under cover of confidentiality, the chairman of Parliament's committee responsible shall automatically apply the confidential procedure laid down in paragraph 3 below.

Further rules concerning the protection of confidential documents shall be adopted by the plenary on the basis of a proposal from the Bureau and shall be annexed to the Rules of Procedure. These rules shall take account of contacts with the Commission and Council.

**G) European Parliament's Bureau Decision on public access to European Parliament documents
28 November 2001**

THE BUREAU,

Having regard to Article 255(2) and (3) of the EC Treaty,

Having regard to 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, and in particular Articles 11, 12 and 18 thereof,

Having regard to Rules 22(2), 171(1) and 172 and Annex VII of the European Parliament's Rules of Procedure,

Whereas the general principles governing access to documents have been established, in accordance with Article 255(2) of the EC Treaty, by Regulation (EC) No 1049/2001;

Whereas, in accordance with Article 255(3) of the EC Treaty and Article 18(1) of Regulation (EC) No 1049/2001, the European Parliament adapted its Rules of Procedure by decision of 13 November 2001;

Whereas pursuant to Rule 172(2), (3) and (4) of the

Following its decision from 13 November 2001, the EP Bureau specified the right of the public to EP's documents

European Parliament's Bureau decision on public access to European Parliament documents

Reference to

- Art. 255 TEC

- Regulation 1049/2001

EP decision of 13 November 2001 (see above)

European Parliament's Rules of Procedure the Bureau is required to adopt rules establishing a register of references to documents, laying down arrangements for access and determining the authorities in charge of handling such documents;

Whereas the Bureau decisions of 10 July 1977 on public access to European Parliament documents and of 17 April 1998 on fees to be paid for delivery of documents were repealed by the abovementioned European Parliament decision of 13 November 2001;

Whereas the measures relating to the system of fees for the issue of documents must be brought into line with the provisions of Article 10 of Regulation (EC) No 1049/2001, in order to specify the additional costs to be paid by the applicant for the issue of very large documents;

Whereas the measures relating to the register of European Parliament documents should be brought together in a single decision with a view to facilitating transparency for citizens,

HEREBY DECIDES:

TITLE I REGISTER OF REFERENCES

Article 1

Creation

1. In accordance with Article 11(2) of Regulation (EC) No 1049/2001 and Rule 172(3) of the Rules of Procedure, a register of references shall be established within the European Parliament.

2. The register of references thus created shall contain references to documents drawn up or received by the European Parliament as from the date from which Regulation (EC) No

- Register of references is established

- All docs drawn up or received by the EP

1049/2001 is applicable (3 December 2001).

3. These references shall constitute the "document's identity papers" which contain not only the data required by Article 11(2) of Regulation (EC) No 1049/2001, but also, as far as possible, references allowing the originating authority of each document, the available languages, the status of the document, the category of the document and the place of storage of the document to be identified.

Identifying
-originating authority
-languages
-status
-category
-place of storage

Article 2

Objectives

The register of references shall be structured so as to allow:

Structure of register of references

- use of a uniform reference system,
- direct access to documents, in particular legislative documents, in electronic form,
- identification of documents which cannot be accessed electronically,
- searches for documents which are not adequately identified by applicants,
- the identification of documents in respect of which public access is subject to the limits laid down in Articles 4 and 9 of Regulation (EC) No 1049/2001,
- recording of confidential documents, in compliance with the limits laid down in Article 9 of the above Regulation.

Management of the register by the responsible service

Article 3 Operation

The service responsible for managing the register of references shall:

- monitor the recording of documents drawn up or received by the European Parliament,
- receive applications for access in written or electronic form and keep a calendar with a view to compliance with the time-limit for reply of 15 working days,
- send out acknowledgements of receipt,
- assist applicants so as to clarify the content of their applications,
- assist applicants with access to documents already published,
- forward applications for access to the service responsible or authorised person when the application relates to a document not recorded in the register or a document subject to the limits laid down in Articles 4 and 9 of Regulation (EC) No 1049/2001,
- confer with applicants where applications relate to very long or complex documents.

Registration

Article 4 Registration of documents

As soon as possible

1. Any document drawn up by the European Parliament shall be entered in the register of references as soon as possible. The Secretary-General shall adopt the necessary internal

implementing measures to ensure that all documents drawn up by the European Parliament are recorded.

2. In this connection, European Parliament documents, as defined by Rule 172(2) of the European Parliament's Rules of Procedure, shall be recorded in the register of references under the responsibility of the body or service which is the originator of the document.

Registration by originator of the doc

3. Documents drawn up under the legislative procedure or for the purposes of parliamentary business shall be entered in the register as soon as they have been tabled or made public.

Legislative docs

4. Other documents which fall within the remit of the administrative services of the Secretariat of the European Parliament shall, as far as possible, be entered in the register of references as soon as authorised by the originating service.

Other docs

5. Any document received by the European Parliament from a third party within the meaning of Article 3 of Regulation (EC) No 1049/2001 shall be forwarded by the official mail service to the register of references, which shall enter it, unless it is a sensitive document, within the meaning of Article 9 of the above Regulation, for which compliance with the time limits prescribed in that article is required.

Docs from a third party

Article 5

Documents directly accessible

1. All documents drawn up or received by the European Parliament under the legislative procedure must be accessible to citizens in electronic form, subject to the limits laid down in Articles 4 and 9 of Regulation (EC) No 1049/2001.

- Documents from EP must be accessible in electronic form

- Accessible through the register

- Register will be available electronically (europarl.eu.int)

- Categories of accessible docs

Principle:
Docs should be available through] the register

Otherwise, applicant may apply in writing

2. In this connection, the European Parliament will make all legislative documents accessible through the register, to enable citizens to have access to the full texts of documents.

3. The European Parliament will make this register electronically accessible on the Europarl website and provide on-line assistance to citizens concerning arrangements for submitting applications for access to documents.

4. Other documents, in particular documents relating to the drafting of policy or strategy, shall be made directly accessible as far as possible.

5. The categories of documents that are directly accessible shall be set out in a list adopted by the European Parliament and annexed to its Rules of Procedure. Documents not included on that list will be accessible on written request.

Article 6 Documents accessible on request

1. Documents drawn up or received by the European Parliament outside the legislative procedure shall, as far as possible, be directly accessible to citizens through the register, subject to the limits laid down in Articles 4 and 9 of Regulation (EC) No 1049/2001.

2. Where entry of a document in the register of references does not permit direct access to the full text, either because the document is not available in electronic form or because the exceptions provided for in Articles 4 and 9 of Regulation (EC) No 1049/2001 are applicable, the applicant may apply for access to the document in writing, or using the electronic form available on the Europarl website. The European Parliament may either grant access to the document or give the reasons for its total or partial refusal in writing.

3. Documents drawn up or received by the European Parliament before the entry into force of Regulation (EC) No 1049/2001 and therefore not available on the register of references, shall be accessible on written request, subject to the limits laid down in Articles 4 and 9 of the above Regulation.

Article 7

Storage of Documents

1. All documents shall be saved in the archives of the database of the register of references. This database, which contains all the documents drawn up by the European Parliament, shall forward a copy of the data and documents to the European Parliament's historical archives (ARCDOC).

All documents shall be saved in the archives of the database of the register

2. Until the database responsible for archiving documents to be entered in the register is operational, the service responsible for the register will use the European Parliament's existing systems and databases and will confine itself to establishing links with the latter, in order to extract the necessary data and make the full texts of documents accessible.

Until register is operational, use of the old system will continue

TITLE II

INITIAL APPLICATIONS

Article 8

Submission of the initial application

1. Applications for access to a European Parliament document may be made in writing or in electronic form in one of the languages listed in Article 314 of the EC Treaty.

- Applications in writing or a electronic form

2. Applications shall be made in a sufficiently precise manner and in particular contain information enabling the document or documents requested to be identified and the name and address of the applicant.

- Applications in a precise manner

- Clarification

3. If an application is not sufficiently precise, the European Parliament shall ask the applicant to clarify it and shall assist him or her in doing so.

- No obligation to state reasons

4. The applicant is not obliged to state the reasons for the application.

Article 9

Processing of written applications

Acknowledgement of the application

1. An application for access to a document held by the European Parliament shall be sent on the same day as it is registered by the official mail service to the service responsible for managing the register of references, which must acknowledged receipt of the application, draft a reply and deliver the document within the prescribed time limit.

Doc of another originator

2. When the application relates to a document drawn up by the European Parliament to which one of the exceptions laid down in Article 4 of Regulation (EC) No 1049/2001 is applicable, the service responsible for the register of references shall contact the service or body that is the originator of the document, which shall suggest the course of action to be taken within five working days.

Doc of a third parties

3. When the doubt as to disclosure concerns documents from third parties, the European Parliament shall consult the latter giving them five working days in which to make their position known with a view to assessing whether one of the exceptions laid down in Articles 4 or 9 of Regulation (EC) No 1049/2001 is applicable.

5 days for the originator to object disclosure

4. When the application for access submitted to the European Parliament concerns a document which has not yet been made public by the originating institution, the European Parliament shall give the institution responsible for

the document five working days in which to express any reservations regarding disclosure of the document.

5. If no reply is received within five working days, the European Parliament shall carry on with the procedure.

Article 10

Processing of applications in electronic form

Electronic forms

1. Any application submitted in electronic form shall be forwarded to the address indicated on the European Parliament's website, as far as possible using the electronic form provided and the on-line help system created to facilitate submitting applications of this kind.

2. Applications in electronic form sent to the European Parliament's website (Europarl) shall be forwarded automatically to the service responsible for the register of references for registration and further action.

3. An application received in electronic form and containing all the necessary information required by Article 8 of this Decision shall automatically trigger the sending of the acknowledgement of receipt to the applicant.

4. The procedures laid down in Articles 9(2) et seq. of this Decision for the processing of initial applications submitted in writing shall also apply to applications submitted in electronic form.

*Deadline for reply**- 15 working days**- State grounds for refusal**- Inform about right to make 'confirmatory' application**- Applicant has 15 to ask for confirmation***Article 11**
Deadline for reply

1. Within a time limit of 15 working days from the registration of the application, the service responsible for the register of references shall grant access to the requested document and shall supply it within the same time limit.

2. Where the European Parliament is unable to grant access to the requested document, it shall notify the applicant in writing of the grounds for its total or partial refusal and inform the applicant of his or her right to make a confirmatory application.

3. In this case the applicant will have 15 working days from receiving the reply to make a confirmatory application.

4. In exceptional cases, where an application relates to a very long document or a large number of documents, the time limit provided for in paragraph 1 of this article may be extended by 15 working days, provided the applicant is notified in advance and that detailed reasons are given.

5. Failure by the European Parliament to reply within the prescribed time limit shall entitle the applicant to make a confirmatory application.

6. The time limit of 15 working days laid down by Article 7 of Regulation (EC) No 1049/2001 shall start to run from the date of registration of the initial application.

Article 12

Competent authority

1. Initial applications sent to the European Parliament shall be handled by the Secretary-General under the authority of the President and the Vice-President responsible for supervision of the handling of applications for access to documents, as provided for by Rule 172(6) of the European Parliament's Rules of Procedure.

Secretary-General

2. Favourable replies to initial applications shall be sent to the applicant by the Secretary-General himself or by his delegate.

- Favorable replies

3. Refusal of an initial application, with a statement of the reasons, shall be decided by the Secretary-General on a proposal from the service or body that is the originator of the document. Any decision to deny access shall be forwarded to the Bureau of the European Parliament for information.

- Refusals

4. The Secretary-General may, at any time, refer an application to the Legal Service and/or the officer responsible for data protection.

TITLE III

CONFIRMATORY APPLICATIONS

Article 13

Submission

1. Confirmatory applications may be sent to the European Parliament in writing or in electronic form within 15 working days, either from receipt of the total or partial refusal of access to the document requested, or in the absence of any reply to the initial application.

Confirmatory applications

15 working days

Formal requirements

2. Confirmatory applications must be made in accordance with the formal requirements laid down in Article 8 of this Decision.

Article 14 **Processing**

Confirmatory applications registered

1. Confirmatory applications shall be registered in accordance with the arrangements laid down in Articles 9(1) and 10(2) of this Decision for applications in writing or in electronic form.

Acknowledgement of receipt

2. The register of references shall forward an acknowledgement of receipt to the applicant and shall start the procedures laid down in Articles 9 and 10 of this Decision, with a view to preparing the European Parliament's reply.

Within 15 working days EP shall either grant access or not

3. Within 15 working days of registration of the application, the European Parliament shall either grant access to the document or notify the applicant in writing of the reasons for its total or partial refusal.

Exceptions

4. In exceptional cases, where an application relates to a very long document or a large number of documents, the time limit provided for in the previous paragraph may be extended by 15 working days, provided the applicant is notified in advance and that detailed reasons are given.

Article 15 **Competent authority**

Confirmatory applications are a matter for the Bureau

1. The reply to any confirmatory application shall be a matter for the Bureau of the European Parliament.

2. On a proposal from the Secretary-General, the Vice-President responsible for supervision of the handling of applications for access to documents shall submit a proposal for a decision to the Bureau.

3. In this connection, the Secretary-General will refer the matter to the Legal Service and/or the officer responsible for data protection, who shall give an opinion within three working days.

4. In order to meet the binding time limit for reply of 15 working days laid down by Article 8 of Regulation (EC) No 1049/2001, the Bureau may delegate the decision on any confirmatory application to the Vice-President responsible for supervision of the handling of applications for access to documents.

Article 16

Remedies

1. Where the European Parliament totally or partially refuses to grant access to a document, it shall inform the applicant of the remedies open to him or her, namely: instituting court proceedings against the Institution and/or making a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty.

EP must inform the applicant of the remedies

2. Failure to reply within the prescribed time limit is to be regarded as a negative response and will entitle the applicant to bring an action or complaint under the conditions set out in the previous paragraph.

Failure to reply within the time limit = negative response

TITLE IV REGISTRATION OF AND ACCESS TO SENSITIVE DOCUMENTS

Article 17 Registration

*Agreement of
the originator*

1. The registration of documents classified as sensitive within the meaning of Article 9 of Regulation (EC) No 1049/2001 from institutions, agencies, Member States, non-member countries or international organisations shall be subject to the prior agreement of the originating authority.

Doc to EP President

2. In this connection, the originating authority of a document classified as sensitive shall forward the document directly to the President of the European Parliament through the most appropriate channel, so as to ensure the confidentiality of the contents of the document.

*Statement on
disclosure conditions*

3. Any transmission of a sensitive document must be accompanied by a statement of the position of the originating authority with regard to authorisation for registration and disclosure of the document.

4. If the originating authority agrees that such a document may be recorded in the European Parliament's register of references, it shall be a matter for the President to decide which references may appear in the register of references. The President shall consult the Vice-President responsible for supervising the handling of applications for access to documents, the Secretary-General or, where appropriate, the chairman of the committee concerned.

5. Any document drawn up by the European Parliament referring to a document classified as sensitive within the meaning of Article 9 of Regulation (EC) No 1049/2001 will be recorded and released only with the authorisation of the President.

The references attributed to such a document will be determined under the conditions set out in the previous paragraph.

6. Where one of the institutions expresses doubts as to the confidential nature of documents received by the European Parliament, the matter shall be referred to the inter-institutional committee established by Article 15(2) of Regulation (EC) No 1049/2001.

Article 18

Processing of applications for access

1. Any application for access to a sensitive document within the meaning of Article 9 of Regulation (EC) No 1049/2001, submitted in writing or in electronic form, shall be registered in accordance with the arrangements laid down in Article 9(1) or Article 10(2) of this Decision.

Application for access to a sensitive document

Application in writing or electronic form

2. The Secretary-General shall forward applications for access to sensitive documents to the President. The reply to an application, at either the initial application or confirmatory application stage, shall be a matter for the Bureau, which may delegate it to the President, pursuant to Rule 22(10) of the European Parliament's Rules of Procedure. In such cases, the President shall consult the Vice-President responsible for supervising the handling of applications for access to documents, the Secretary-General or, where appropriate, the chairman of the committee concerned.

Secretary-General forwards to President

3. The time limit of 15 working days laid down in Articles 7 and 8 of Regulation (EC) No 1049/2001 shall start to run from the date of registration of the initial or confirmatory application.

15 working days deadline to respond

Authorised persons

- *President*
- *Competent Vice-President*
- *Chairman of competent committee*
- *Secretary-General*

*Protection of sensitive docs***Article 19****Authorised persons:**

The persons authorised to acquaint themselves with sensitive documents are: the President of the European Parliament, the Vice-President responsible for supervision of the handling of applications for access to documents, the chairman of the committee directly concerned and the Secretary-General, unless agreements with the other institutions provide for special authorisation.

Article 20**Protection of sensitive documents**

1. Sensitive documents, within the meaning of Article 9 of Regulation (EC) No 1049/2001, shall be subject to strict security rules so as to ensure their confidential handling within the European Parliament.

2. In this connection, the Secretary-General shall submit draft rules to the Bureau, taking account of contacts and agreements with the Commission and the Council.

3. The proposal adopted by the Bureau will be submitted to the Plenary for approval, and the text thus adopted will be annexed to the European Parliament's Rules of Procedure.

TITLE V ISSUE OF DOCUMENTS

Article 21**Issue***Issue with regard to applicant's preference*

1. Documents are to be supplied in the form of a copy, or in electronic format, with full regard to the applicant's preference.

*Informing applicant on
where and how to get
document*

2. If a document has already been released by the European Parliament or by another institution and is easily accessible, the European Parliament may grant access to the document by informing the applicant how to obtain the requested document.

Article 22

Costs

Cost of the reply

1. The cost of producing and sending copies may be charged to the applicant. This charge may not exceed the real cost of the operation.

*Sending a document
may be charged*

2. Consultation on the spot, copies of less than 20 A4 pages and direct access in electronic form or through the register shall be free of charge.

*Consultation
on the spot is free*

Article 23

Applications for very large documents

1. The issuing of documents exceeding 20 A4 pages shall be subject to a fee of EUR 10, plus EUR 0,030 per page.

*More than 20 pages
subject to a fee*

2. The amount of this fee may be revised by a decision of the Bureau of the European Parliament on a proposal from the Secretary-General.

3. Expenses relating to other means of transmission shall be decided by the Secretary-General but may not exceed the real cost of the operation.

4. In the event of repeated or successive applications concerning very long documents or a large number of documents, the European Parliament may confer with the applicant informally with a view to finding a solution.

5. Published documents are not covered by this Decision and shall continue to be subject to their own pricing system.

Article 24

Additional translation costs

Translation costs

Where translation into a language other than those available is requested by the applicant, the existing freelance rates applied by the European Parliament to external translations shall apply.

TITLE VI

APPLICATION

Article 25

Application

This Decision shall apply with due regard for and without prejudice to the provisions of Regulation (EC) No 1049/2001 and of the European Parliament's Rules of Procedure.

Article 26

Review

This Decision shall be reviewed two years after its entry into force. To this end, the Secretary-General of the European Parliament shall submit a report on the implementation thereof.

Article 27

Entry into force

*Entry into force on
3 June 2002*

This Decision shall enter into force on the date of its publication in the Official Journal of the European Communities. The register of references established by this Decision shall take effect on 3 June 2002.

Done at Brussels, 28 November 2001.

For the Bureau

President Nicole Fontaine

H) Commission decision adapting its Rules of Procedure to the provisions of Regulation No 1049/2001

**COMMISSION DECISION 2001
(2001/937 EC, ECSC, Euratom)
5 December 2001**

2001/937/EC, ECSC, Euratom: Commission Decision of 5 December 2001 amending its rules of procedure (notified under document number C(2001) 3714)

Decision to amend rules of procedures according to Regulation 1049/2001

Official Journal L 345 , 29/12/2001 P. 0094 - 0098

Commission Decision of 5 December 2001 amending its rules of procedure (notified under document number C(2001) 3714)
(2001/937/EC, ECSC, Euratom)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Reference to:

Having regard to the Treaty establishing the European Community, and in particular Article 218(2) thereof,

- Art. 218(2) TEC

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 16 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 131 thereof,

Having regard to the Treaty on European Union, and in particular Article 28(1) and Article 41(1) thereof,

*- Art. 28(1) TEU
and Art. 41(1) TEU*

HAS DECIDED AS FOLLOWS:

Rules for the application of Regulation no. 1049/2001=
Annex

Article 1

The detailed rules for the application 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(1), which are set out in the Annex to this Decision, are annexed to the Commission's Rules of Procedure.

Article 2

Commission Decision 94/90/ECSC, EC, Euratom(2) is repealed.

Article 3

The Decision shall enter into force on the day of its publication in the Official Journal of the European Communities.

Entry into force

Done at Brussels, 5 December 2001.

ANNEX

Application of Regulation 1049/2001 regarding public access to documents

Detailed rules for the application of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents

Reference to

Whereas:

Art. 255(2) TEC

(1) In accordance with Article 255(2) of the EC Treaty, the European Parliament and the Council adopted Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.(1)

and Art. 255(3) TEC

(2) In accordance with Article 255(3) of the Treaty, Article 18 of the Regulation, which lays down general principles and limits for the exercise of the right of access to documents,

provides that each institution is to adapt its Rules of Procedure to the provisions of the Regulation,

Article 18 of the Regulation lays down general principles and limits for access to documents

Article 1 **Beneficiaries**

Citizens of the Union and natural or legal persons residing or having their registered office in a Member State shall exercise their right of access to Commission documents under Article 255(1) of the Treaty and Article 2(1) of Regulation (EC) No 1049/2001 in accordance with these detailed rules. This right of access concerns documents held by the Commission, that is to say, documents drawn up or received by it and in its possession.

Right of access to documents for:
- citizens of the Union,
- natural or legal persons residing in the Union

Pursuant to Article 2(2) of Regulation (EC) No 1049/2001, citizens of third countries not residing in a Member State and legal persons not having their registered in one of the Member States shall enjoy the right of access to Commission documents on the same terms as the beneficiaries referred to in Article 255(1) of the Treaty.

Citizens of third countries enjoy the right of access to Commission documents..

However, pursuant to Article 195(1) of the Treaty, they shall not have the option of laying a complaint before the European Ombudsman. But if the Commission wholly or partly refuses them access to a document after a confirmatory application, they may bring an action before the Court of First Instance of the European Communities in accordance with the fourth paragraph of Article 230 of the Treaty.

...but have no option of complaint to Ombudsman

Article 2 Access applications

*Applications
by mail, fax, or e-mail to
the Secretariat
or to the relevant
department*

All applications for access to a document shall be sent by mail, fax or e-mail to the Secretariat-General of the Commission or to the relevant Directorate-General or department. The addresses to which applications are to be sent shall be published in the practical guide referred to in Article 8 of these Rules.

*Answer within
15 working days*

The Commission shall answer initial and confirmatory access applications within fifteen working days from the date of registration of the application. In the case of complex or bulky applications, the deadline may be extended by fifteen working days. Reasons must be given for any extension of the deadline and it must be notified to the applicant beforehand.

If an application is imprecise, as referred to in Article 6(2) of Regulation (EC) No 1049/2001, the Commission shall invite the applicant to provide additional information making it possible to identify the documents requested; the deadline for reply shall run only from the time when the Commission has this information.

*Any negative decision
requires explanation*

Any decision which is even partly negative shall state the reason for the refusal based on one of the exceptions listed in Article 4 of Regulation (EC) No 1049/2001 and shall inform the applicant of the remedies available to him.

Article 3

Treatment of initial applications

Without prejudice to Article 9 of these Rules, as soon as the application is registered, an acknowledgement of receipt shall be sent to the applicant, unless the answer can be sent by return post.

*Acknowledgement
of receipt*

The acknowledgement of receipt and the answer shall be sent in writing, where appropriate, by electronic means.

The applicant shall be informed of the response to his application either by the Director-General or the head of department concerned, or by a Director designated for this purpose in the Secretariat-General or by a Director designated in the OLAF where the application concerns documents concerning OLAF activities referred to in Article 2(1) and (2) of Commission Decision 1999/352/EC, ECSC, Euratom(2) establishing OLAF, or by a member of staff they have designated for this purpose.

*Applicant is informed of
response by Director-
General or head of
department*

Any answer which is even partly negative shall inform the applicant of his right to submit, within fifteen working days from receipt of the answer, a confirmatory application to the Secretary-General of the Commission or to the Director of OLAF where the confirmatory application concerns documents concerning OLAF activities referred to in Article 2(1) and (2) of Decision 1999/352/EC, ECSC, Euratom.

*Negative response also
informs about the right
to submit a confirmatory
application within 15
days*

Decisions on confirmatory applications is delegated to the Secretary-General

*Negative decisions:
- written notification
- information about right to go to Court or Ombudsman*

Third party documents:
Reference to Article 4 of 1049/2001

No consultation of third party, if one of the exceptions applies

Article 4

Treatment of confirmatory applications

In accordance with Article 14 of the Commission's Rules of Procedure, the power to take decisions on confirmatory applications is delegated to the Secretary-General. However, where the confirmatory application concerns documents concerning OLAF activities referred to in Article 2(1) and (2) of Decision 1999/352/EC, ECSC, Euratom, the decision-making power is delegated to the Director of OLAF.

The Directorate-General or department shall assist the Secretariat-General in the preparation of the decision.

The decision shall be taken by the Secretary-General or by the Director of OLAF after agreement of the Legal Service.

The decision shall be notified to the applicant in writing, where appropriate by electronic means, and inform him of his right to bring an action before the Court of First Instance or to lodge a complaint with the European Ombudsman.

Article 5

Consultations

1. Where the Commission receives an application for access to a document which it holds but which originates from a third party, the Directorate-General or department holding the document shall check whether one of the exceptions provided for by Article 4 of Regulation (EC) No 1049/2001 applies. If the document requested is classified under the Commission's security rules, Article 6 of these Rules shall apply.

2. If, after that examination, the Directorate-General or department holding the document considers that access to it

must be refused under one of the exceptions provided for by Article 4 of Regulation (EC) No 1049/2001, the negative answer shall be sent to the applicant without consultation of the third-party author.

3. The Directorate-General or department holding the document shall grant the application without consulting the third-party author where:

(a) the document requested has already been disclosed either by its author or under the Regulation or similar provisions;

(b) the disclosure, or partial disclosure, of its contents would not obviously affect one of the interests referred to in Article 4 of Regulation (EC) No 1049/2001.

4. In all the other cases, the third-party author shall be consulted. In particular, if the application for access concerns a document originating from a Member State, the Directorate-General or department holding the document shall consult the originating authority where:

(a) the document was forwarded to the Commission before the date from which Regulation (EC) No 1049/2001 applies;

(b) the Member State has asked the Commission not to disclose the document without its prior agreement, in accordance with Article 4(5) of Regulation (EC) No 1049/2001.

5. The third-party author consulted shall have a deadline for reply which shall be no shorter than five working days but must enable the Commission to abide by its own deadlines for reply. In the absence of an answer within the prescribed period, or if the third party is untraceable or not identifiable, the Commission shall decide in accordance with the rules on

*No consultation of third party,
- if doc is already disclosed
- if no interest of third party would be affected*

**General rule:
Consultation of third party**

exceptions in Article 4 of Regulation (EC) No 1049/2001, taking into account the legitimate interests of the third party on the basis of the information at its disposal.

6. If the Commission intends to give access to a document against the explicit opinion of the author, it shall inform the author of its intention to disclose the document after a ten-working day period and shall draw his attention to the remedies available to him to oppose disclosure.

7. Where a Member State receives an application for access to a document originating from the Commission, it may, for the purposes of consultation, contact the Secretariat-General, which shall be responsible for determining the Directorate-General or department responsible for the document within the Commission. The issuing Directorate-General or department of the document reply to the application after consulting the Secretariat-General.

Article 6

Treatment of applications for access to classified documents

Classified documents
to be handled only by
entitled officials

Where an application for access concerns a sensitive document as defined in Article 9(1) of Regulation (EC) No 1049/2001, or another document classified under the Commission's security rules, it shall be handled by officials entitled to acquaint themselves with the document.

Reasons for denial of
access

Reasons shall be given on the basis of the exceptions listed in Article 4 of Regulation (EC) No 1049/2001 for any decision refusing access to all or part of a classified document. If it proves that access to the requested document cannot be refused on the basis of these exceptions, the official handling the application shall ensure that the document is declassified before sending it to the applicant.

Declassification

Agreement of
originating authority

The agreement of the originating authority shall be required if access is to be given to a sensitive document.

Article 7

Exercise of the right of access

Documents shall be sent by mail, fax or, if available, by e-mail, depending on the application. If documents are voluminous or difficult to handle, the applicant may be invited to consult the documents on the spot. This consultation shall be free.

*Docs are sent by mail,
fax, email*

On the spot consultation

If the document has been published, the answer shall consist of the publication references and/or the place where the document is available and where appropriate of its web address on the EUROPA site.

If the volume of the documents requested exceeds twenty pages, the applicant may be charged a fee of EUR 0,10 per page plus carriage costs. The charges for other media shall be decided case by case but shall not exceed a reasonable amount.

Fees for large documents over 20 pages

Article 8

Measures facilitating access to the documents

1. The coverage of the register provided for by Article 11 of Regulation (EC) No 1049/2001 shall be extended gradually. It shall be announced on the EUROPA homepage.

*Permanent extension of
register*

The register shall contain the title of the document (in the languages in which it is available), its serial number and other useful references, an indication of its author and the date of its creation or adoption.

*Title, number, other
reference*

Guide to inform the public of their access rights

Direct access to docs

Following documents must be available:
 - *agendas*
 - *minutes*
 - *adopted documents*
 - *disclosed documents*

A help page (in all official languages) shall inform the public how the document can be obtained. If the document is published, there shall be a link to the full text.

2. The Commission shall draw up a practical guide to inform the public of their rights under Regulation (EC) No 1049/2001. The guide shall be distributed in all official languages on the EUROPA site and in booklet form.

Article 9

Documents directly accessible to the public

1. This Article applies only to documents drawn up or received after the date from which Regulation (EC) No 1049/2001 applies.

2. The following documents shall be automatically provided on request and, as far as possible, made directly accessible by electronic means:

(a) agendas for Commission meetings;

(b) ordinary minutes of Commission meetings, after approval;

(c) documents adopted by the Commission for publication in the Official Journal of the European Communities;

(d) documents originating from third parties which have already been disclosed by their author or with his consent;

(e) documents already disclosed following a previous application.

3. If it is clear that none of the exceptions provided for in Article 4 of Regulation (EC) No 1049/2001 is applicable to them, the following documents may be made available, as far as possible by electronic means, provided they do not reflect opinions or individual positions:

(a) after the adoption of a proposal for an act of the Council or of the European Parliament and of the Council, preparatory documents for that proposal that were submitted to the College during the adoption process;

(b) after the adoption of an act by the Commission under the implementing powers conferred on it, preparatory documents for that act submitted to the College during the adoption process;

(c) after the adoption by the Commission of an act under its own powers, or of a communication, report or working document, preparatory documents for that document submitted to the College during the adoption process.

If no exception according to Art. 4 of Reg. 1049/2001..

..and after the adoption of a proposal, implementing or delegated act...

... then preparatory docs must also be made available

Article 10

Internal organisation

The Directors-General and heads of department shall have the power to decide on the action to be taken on initial applications. To this end, they shall designate an official to consider access applications and coordinate the response of his Directorate-General or department.

Directors-General and heads of departments have the power to decide on initial applications

Answers to initial applications shall be sent to the Secretariat-General for information.

Confirmatory applications shall be sent for information to the Directorate-General or department which answered the initial application.

The Secretariat-General shall ensure coordination and uniform implementation of these rules by Commission Directorates-General and departments. To this end, it shall provide all necessary advice and guidelines.

I) Council Decision of 29 November 2001 amending the Council's Rules of Procedure (2001/840/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 207(3) and Article 255(3) thereof,

Whereas:

(1) In accordance with Article 255(2) of the Treaty, 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⁽¹⁾ defines the general principles, conditions and limits governing the right of access to documents provided for in Article 255(1) of the Treaty.

(2) Article 255(3) of the Treaty provides that the European Parliament, the Council and the Commission shall elaborate in their Rules of Procedure specific provisions regarding access to their documents.

(3) On the basis of its Rules of Procedure adopted by Decision 2000/396/EC, ECSC, Euratom⁽²⁾, the Council has adopted a series of acts regarding access to its documents. Those acts should be consolidated in a single text incorporating, in an annex to the Rules of Procedure, both the unchanged provisions and the substantive amendments to those acts and new provisions which are to be made in accordance with Article 18 of Regulation (EC) No 1049/2001,

HAS DECIDED AS FOLLOWS:

Article 1

The Council's Rules of Procedure are hereby amended as follows:

1. Article 10 shall be replaced by the following and the text of footnote 1 shall be deleted: "Article 10 Public access to Council documents

The specific provisions regarding public access to Council documents are set out in Annex III.";

2. Article 17(1)(g) shall be replaced by the following: "(g) international agreements concluded by the Community. Reference shall be made in the Official Journal to the entry into force of such agreements.";

3. the following point shall be added to Article 17(1): "(h) international agreements concluded in accordance with Article 24 of the Treaty on European Union, unless the Council decides otherwise on the grounds of Articles 4 and 9 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(3).

Reference shall be made in the Official Journal to the entry into force of such agreements.";

4. the following Annex shall be added:

ANNEX III: SPECIFIC PROVISIONS REGARDING PUBLIC ACCESS TO COUNCIL DOCUMENTS

Article 1

Scope

Any natural or legal person shall have access to Council documents subject to the principles, conditions and limits laid

*Specific ANNEX on
public access to
Council documents*

*Beneficiaries:
Natural and legal
persons*

*Third party documents:
Basic principle:
Consultation of third
party unless access is
not granted anyway*

down in Regulation (EC) No 1049/2001 and the specific provisions laid down in this Annex.

Article 2

Consultation as regards third-party documents

1. For the purpose of applying Article 4(5) and Article 9(3) of Regulation (EC) No 1049/2001 and unless it is clear, upon examination of the document in the light of Article 4(1), (2) and (3) of Regulation (EC) No 1049/2001, that it shall not be disclosed, the third party concerned shall be consulted if:

(a) the document is a sensitive document as defined in Article 9(1) of Regulation (EC) No 1049/2001;

(b) the document originates from a Member State and
- was submitted to the Council before 3 December 2001; or
- the Member State concerned requested that it not be disclosed without its prior agreement.

2. In all other cases, where the Council receives an application for a third-party document in its possession, the General Secretariat, for the purpose of applying Article 4(4) of Regulation (EC) No 1049/2001, shall consult the third party concerned unless it is clear, upon examination of the document in the light of Article 4(1), (2) and (3) of Regulation (EC) No 1049/2001, that it shall or shall not be disclosed.

3. The third party shall be consulted in writing (including by e-mail) and be given a reasonable time limit for its reply, taking into account the time limit laid down in Article 7 of Regulation (EC) No 1049/2001. In the cases referred to in paragraph 1, the third party shall be asked to give its opinion in writing.

4. Where the document does not fall within paragraph 1(a) or (b) and the General Secretariat, in the light of the third party's negative opinion, is not satisfied that Article 4(1) or (2) of Regulation (EC) No 1049/2001 is applicable, the Council shall be seized of the matter.

If the Council envisages the release of the document, the third party shall be informed immediately in writing of the Council's intention to release the document after a time peri-

od of at least 10 working days. At the same time, the third party's attention shall be drawn to Article 243 of the Treaty establishing the European Community.

Article 3

Requests for consultation received from other institutions or from Member States

Requests for consultations with the Council made by another institution or a Member State concerning an application for a Council document shall be sent via e-mail to access@consilium.eu.int or by fax to +32(0)2 285 6361.

The General Secretariat shall give its opinion on behalf of the Council promptly, taking into account any time limit required for a decision to be made by the institution or the Member State concerned, and at the latest within five working days.

*Request to the Council
as third party*

Article 4

Documents originating from Member States

Any request by a Member State under Article 4(5) of Regulation (EC) No 1049/2001 shall be made in writing to the General Secretariat.

Article 5

Referral of requests by Member States

When a Member States refers to a request to the Council, it shall be handled in accordance with Articles 7 and 8 of Regulation (EC) No 1049/2001 and the relevant provisions of this Annex. In the event of a total or partial refusal of access, the applicant shall be informed that any confirmatory application must be addressed directly to the Council.

Article 6

Address for applications

Applications for access to a document shall be addressed in writing to the Secretary-General of the Council/High Representative, rue de la Loi/Wetstraat 175, B-1048

Brussels, by e-mail to access@consilium.eu.int or by fax to +32(0)2 285 6361.

Article 7

Processing of initial applications

Subject to Article 9(2) and (3) of Regulation (EC) No 1049/2001, any application for access to a Council document shall be handled by the General Secretariat.

Article 8

Processing of confirmatory applications

Subject to Article 9(2) and (3) of Regulation (EC) No 1049/2001, any confirmatory application shall be decided upon by the Council.

Article 9

Charges

The charges for producing and sending copies of Council documents shall be set by the Secretary-General.

Article 10

Public register of Council documents

1. The General Secretariat shall be responsible for providing public access to the register of Council documents.

2. In addition to the references to documents, it shall be indicated in the register which documents drawn up after 1 July 2000 have already been released to the public. Subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data(1) and Article 16 of Regulation (EC) No 1049/2001, their content shall be made available on the Internet.

Article 11

Documents directly accessible to the public

1. This Article shall apply to all Council documents, provided that they are not classified and without prejudice to the possibility of making a written application in accordance with Article 6 of Regulation (EC) No 1049/2001.

2. For the purpose of this Article:

- "circulation" shall mean distribution of the final version of a document to the members of the Council, their representatives or delegates;

- "legislative document" shall mean any document concerning the examination and adoption of a legislative act within the meaning of Article 7 of the Council's Rules of Procedure.

3. The General Secretariat shall make the following documents available to the public as soon as they have been circulated:

(a) documents of which neither the Council nor a Member State is the author, which have been made public by their author or with his agreement;

(b) provisional agenda of meetings of the Council in its various formations;

(c) any text adopted by the Council and intended to be published in the Official Journal of the European Communities.

4. Provided that they are clearly not covered by any of the exceptions laid down in Article 4 of Regulation (EC) No 1049/2001, the General Secretariat may also make the following documents available to the public as soon as they have been circulated:

(a) provisional agenda of committees and working parties;

(b) other documents, such as information notes, reports, progress reports and reports on the state of discussions in the Council or one of its preparatory bodies which do not reflect individual positions of delegations, excluding Legal Service opinions and contributions.

5. The General Secretariat shall make the following legislative documents available to the public, in addition to the doc-

Broad interpretation of restriction: Docs shall be accessible, unless they are classified

Council interprets Article 6 in a way that accessibility criterion is met if only on request

uments referred to in paragraphs 3 and 4, as soon as they have been circulated:

(a) cover notes and copies of letters concerning legislative acts addressed to the Council by other institutions or bodies of the European Union or, subject to Article 4(5) of Regulation (EC) No 1049/2001, by a Member State;

(b) notes submitted to Coreper and/or to the Council for approval ("I/A" and "A" Item notes), as well as the draft legislative acts to which they refer;

(c) decisions adopted by the Council during the procedure referred to in Article 251 of the EC Treaty and joint texts approved by the Conciliation Committee.

6. After adoption of one of the decisions referred to in paragraph 5(c) or final adoption of the act concerned, the General Secretariat shall make available to the public any legislative documents relating to this act which were drawn up before one of such decisions and which are not covered by any of the exceptions laid down in Article 4(1), (2) and (3), second subparagraph, of Regulation (EC) No 1049/2001, such as information notes, reports, progress reports and reports on the state of discussions in the Council or in one of its preparatory bodies ("outcomes of proceedings"), excluding Legal Service opinions and contributions.

At the request of a Member State, documents which are covered by the first subparagraph and reflect the individual position of that Member State's delegation in the Council shall not be made available to the public under these provisions.

(1) OJ L 8, 12.1.2001, p. 1."

Article 2

The following acts are hereby repealed:

(a) Council Decision 93/731/EC of 20 December 1993 on public access to Council documents(4),

(b) Council Decision 2000/23/EC of 6 December 1999 on the improvement of information on the Council's legislative activ-

ities and the public register of Council documents(5),
 (c) Council Decision 2001/320/EC of 9 April 2001 on making
 certain categories of Council documents available to the pub-
 lic(6).

Article 3

This Decision shall enter into force on 3 December 2001.

Done at Brussels, 29 November 2001.

For the Council

The President

M. Vanderpoorten

J) Joint Declaration of the European Parliament and the Council on public access to documents from agencies

Joint declaration relating to 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 (OJ L 145 of 31.5.2001, p. 43)

1. The European Parliament, the Council and the Commission agree that the agencies and similar bodies created by the legislator should have rules on access to their documents which conform to those of this Regulation. To this effect, the European Parliament and the Council welcome the Commission's intention to propose, as soon as possible, amendments to the acts establishing the existing agencies and bodies and to include provisions in future proposals concerning the establishment of such agencies and bodies. They undertake to adopt the necessary acts rapidly.

Access to documents shall also apply to agencies etc.

Regulation initially only covered EP, Council, Commission (wording of Art. 255TEC)

A set of regulations which came into force on 1.10.2003 closed that gap

2. The European Parliament, the Council and the Commission call on the institutions and bodies not covered by paragraph 1 to adopt internal rules on public access to documents which take account of the principles and limits in this Regulation.

Specific Agreement (IIA) between Council and EP on sensitive information in Security and Defence Policy(CSDP)

K) Interinstitutional Agreement concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy

Interinstitutional Agreement of 20 November 2002 between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy (2002/C 298/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL,
Whereas:

(1) Article 21 of the Treaty on European Union states that the Council Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. That Article also stipulates that the European Parliament shall be kept regularly informed by the Council Presidency and the Commission of the development of the common foreign and security policy. A mechanism should be introduced to ensure that these principles are implemented in this field.

(2) In view of the specific nature and the especially sensitive content of certain highly classified information in the field of security and defence policy, special arrangements should be

In Common Foreign and Security Policy(CFSP), EP is informed and heard

Therefore, the institutions must agree on how to deal with sensitive docs

introduced for the handling of documents containing such information.

(3) In conformity with Article 9(7) 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(1), the Council is to inform the European Parliament regarding sensitive documents as defined in Article 9(1) of that Regulation in accordance with arrangements agreed between the institutions.

(4) In most Member States there are specific mechanisms for the transmission and handling of classified information between governments and national parliaments. This Interinstitutional Agreement should provide the European Parliament with treatment inspired by best practices in Member States,

HAVE CONCLUDED THIS INTER-INSTITUTIONAL AGREEMENT:

1. Scope

Scope:

1.1. This Interinstitutional Agreement deals with access by the European Parliament to sensitive information, i.e. information classified as TRÈS SECRET/TOP SECRET, SECRET or CONFIDENTIEL, whatever its origin, medium or state of completion, held by the Council in the field of security and defence policy and the handling of documents so classified.

Access to sensitive info by the EP

1.2. Information originating from a third State or international organisation shall be transmitted with the agreement of that State or organisation.

Treatment of info from a third state or international organisation

Where information originating from a Member State is transmitted to the Council without explicit restriction on its dissemination to other institutions other than its classification, the rules in sections 2 and 3 of this Interinstitutional Agreement shall apply. Otherwise, such information shall be transmitted with the agreement of the Member State in question.

In the case of a refusal of the transmission of information originating from a third State, an international organisation or a Member State, the Council shall give the reasons.

1.3. The provisions of this Interinstitutional Agreement shall apply in accordance with applicable law and without prejudice to Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission of 19 April 1995 on the detailed provisions governing the exercise of the European Parliament's right of inquiry⁽²⁾ and without prejudice to existing arrangements, especially the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure⁽³⁾.

General rules:

*Sincere cooperation
between EP and
Council*

2. General rules

2.1. The two institutions shall act in accordance with their mutual duties of sincere cooperation and in a spirit of mutual trust as well as in conformity with the relevant Treaty provisions. Communication and handling of the information covered by this Interinstitutional Agreement must have due regard for the interests which classification is designed to protect, and in particular the public interest as regards the security and defence of the European Union or of one or more of its Member States or military and non-military crisis management.

2.2. At the request of one of the persons referred to in point

3.1 below, the Presidency of the Council or the Secretary-General/High Representative shall inform them with all due despatch of the content of any sensitive information required for the exercise of the powers conferred on the European Parliament by the Treaty on European Union in the field covered by the present Interinstitutional Agreement, taking into account the public interest in matters relating to the security and defence of the European Union or of one or more of its Member States or military and non-military crisis management, in accordance with the arrangements laid down in section 3 below.

3. Arrangements for access to and handling of sensitive information

3.1. In the context of this Interinstitutional Agreement, the President of the European Parliament or the Chairman of the European Parliament's Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy may request that the Presidency of the Council or the Secretary-General/High Representative convey information to this committee on developments in European security and defence policy, including sensitive information to which point 3.3 applies.

3.2. In the event of a crisis or at the request of the President of the European Parliament or of the Chairman of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, such information shall be provided at the earliest opportunity.

3.3. In this framework, the President of the European Parliament and a special committee chaired by the Chairman of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and composed of four members

*Access to and handling
of sensitive info*

*Request to deliver sensitive info to EP
Committees by privileged persons:*
- EP President
- Chairmen of 3
Committees

designated by the Conference of Presidents shall be informed by the Presidency of the Council or the Secretary-General/High Representative of the content of the sensitive information where it is required for the exercise of the powers conferred on the European Parliament by the Treaty on European Union in the field covered by the present Interinstitutional Agreement. The President of the European Parliament and the special committee may ask to consult the documents in question on the premises of the Council.

Where this is appropriate and possible in the light of the nature and content of the information or documents concerned, these shall be made available to the President of the European Parliament, who shall select one of the following options:

(a) information intended for the chairman of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy;

(b) access to information restricted to the members of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy only;

(c) discussion in the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, meeting in camera, in accordance with arrangements which may vary by virtue of the degree of confidentiality involved;

(d) communication of documents from which information has been expunged in the light of the degree of secrecy required.

*Specific treatment of
"Top secret" docs*

These options are not applicable if sensitive information is classified as TRÈS SECRET//TOP SECRET.

As to information or documents classified as SECRET or

CONFIDENTIEL, the selection by the President of the European Parliament of one of these options shall be previously agreed with the Council.

The information or documents in question shall not be published or forwarded to any other addressee.

4. Final provisions

4.1. The European Parliament and the Council, each for its own part, shall take all necessary measures to ensure the implementation of this Interinstitutional Agreement, including the steps required for the security clearance of the persons involved.

4.2. The two institutions are willing to discuss comparable Interinstitutional Agreements covering classified information in other areas of the Council's activities, on the understanding that the provisions of this Interinstitutional Agreement do not constitute a precedent for the Union's or the Community's other areas of activity and shall not affect the substance of any other Interinstitutional Agreements.

4.3. This Interinstitutional Agreement shall be reviewed after two years at the request of either of the two institutions in the light of experience gained in implementing it.

Done at, Strasbourg on 20 November 2002.

For the European Parliament
The President

For the Council
The President

ANNEX

This Interinstitutional Agreement shall be implemented in conformity with the relevant applicable regulations and in particular with the principle according to which the consent of the originator is a necessary condition for the transmission of classified information as laid down in point 1.2.

Consultation of sensitive documents by the members of the Special Committee of the European Parliament shall take place in a secured room at the Council premises.

This Interinstitutional Agreement shall enter into force after the European Parliament has adopted internal security measures which are in accordance with the principles laid down in point 2.1 and comparable to those of the other institutions in order to guarantee an equivalent level of protection of the sensitive information concerned.

L.) European Case law

L.1) Court of First Instance

Carvel v Council Case T-194/94

Public right of access to Council documents (Council meetings)- Refusal of disclosure without balancing the competing interest involved

According to the Court, it is clear both from the objective pursued by Council Decision 93/731 and from the terms of its Article 4, namely to allow the public wide access to Council's documents, that the Council must genuinely balance the interests of citizens in gaining access to its documents

Public right of access to Council documents

Balance between the interests of citizens in gaining access against any interest of its own

against any interest of its own. The rights guaranteed in Article 4 (2) cannot be merely defeated by relying on the fact that its deliberation are covered by an obligation of professional secrecy.

World Wildlife Fund v Commission Case T-105/95

Right of Public access to Commission documents - Decision 94/90- Exceptions of the principle of free access to documents - Obligation to state reasons

This was the first case concerning the access to Commission documents. The Court ruled that, by adopting the Decision 94/90, the Commission created a binding institutional rule which indicated to citizens that their request to access to documents would have to be dealt according to the procedures, conditions and exceptions laid down by this decision. Exceptions to the general principle that citizens should have access to documents must be construed in a manner, which should not render it impossible to attain the objective of transparency pursued by the Decision. This means that exceptions from the rule should be applied and interpreted restrictively and that the Commission failed to clearly explain why the said documents were considered as exceptions.

*Right of public access
to Commission
documents*

*Commission created a
binding institutional rule
which indicated to citizens
that their request
to documents would
have to be dealt with
according to procedures*

Interporc (I) v Commission Case T-124/96

Right of public access to Commission documents - Decision 94/90 = measure conferring rights to individuals - Exceptions of the principle of free access to documents - Obligation to state reasons

*Right of public access
to Commission
documents*

According to the Court, the Commission had to explain how the documents in question fell within the 'court proceedings' exception. Furthermore, the Court clarified that any person who requests access to any unpublished document is not required to give a reason for the request.

*No reason for the
request required*

Right of public access to Commission documents

Court proceedings exceptions only refer to documents drawn up for the purposes of a specific case

Overruled by ECJ judgement

Council documents in third pillar (Justice and Police Co-operation in Criminal Matters- JHA)

In order to increase democratic character and public trust in the institution citizens do not have to give reasons for access to a document

Van der Wal v Commission Case T-83/96

Right of public access to Commission documents - Decision 94/90 = measure conferring rights to individuals - Exceptions of the principle of free access to documents - Obligation to state reasons - Documents sent from Commission to national court in the context of competition law disputes

Decision 94/90 provides that the institutions are to refuse access to any documents where disclosure could undermine the protection of the public interest. The Court therefore considered the general respect for the fundamental right of every person to a fair hearing as prevailing over the public right of access to documents. However, the Court ruled that the 'court proceedings' exception only covered documents drawn up for the purposes of a specific case. National courts have autonomy as to whether to release documents.

(Judgment overruled by Judgment of the Court in Van der Wal and Netherlands v. Commission Joined Cases C-174/98 P and C-189/98 P [2000] ECR I-1)

Svenska Journalistförbundet v Council Case T-174/95

Right of Public access to Council documents related to the third pillar - No obligation to state reasons for request

The Court stated that the objective of the 1993 Decision is to give the largest possible access for citizens to information with a view to strengthening the democratic character of the institutions and the trust of the public in the administration. It does not require that the members of the public put forward reasons for seeking access to requested documents. The fact that the requested documents were already in the public domain is irrelevant in this connection. Art. 1(2) and 2(2) of the Decision provide that it is to apply to all Council documents, which means also to documents relating to Title VI TEU (third pillar). Furthermore, the Court clarified that,

although, by virtue of Article L TEU, it has no jurisdiction to review the legality of measures adopted under Title VI, its jurisdiction in the matter of public access to those measure is not curtailed.

Rothmans v Commission Case T-188/97

Right of public access to Commission documents - Decision 94/90 - Rule on authorship - Refusal of disclosure of the minutes of a comitology committee -

*Right of public access
to Commission
documents*

The Court stated that the rule on authorship constitutes an exception to the general principle of public access to documents and has to be interpreted and applied strictly. In this case, committees established to advise the Commission on exercise of its powers to implement legislation must be regarded as part of the Commission for the purposes of the rules and cannot be regarded as "another Community institution or body. Refusal of access to the minutes of the various "comitology" committees would represent a considerable restriction incompatible with the very objective of the right of access to documents. Consequently, the Commission's decision refusing access to the Customs Code Committee was annulled.

*The rule on authorship
constitutes as an excep-
tion to the general prin-
ciple of public access to
documents*

Hautala v Council Case T-14/98

Right of public access to Council documents - Protection of the public interest - International relations - Council guidelines on arms exports to third countries

*Right of public access
to Council documents*

By stating that the exceptions provided for in Article 4 (1) of the Decision 93/731 must be interpreted in the light of the principle of the right to information and the principle of proportionality, the Court underlined that the Council was obliged to examine whether partial access should be granted to the

*Partial access to infor-
mation not covered by
the exceptions*

information not covered by the exceptions and give access to those information not covered by the exceptions. The Court hence ruled that the 1993 rules also applied to the second pillar.

Right of public access to Commission documents

Bavarian Lager v Commission Case T-309/97

Right of public access to Commission documents- Decision 94/90 - Court proceedings- Documents relating to infringement procedure against UK- Scope of the exception relating to protection of the public interest

Exception, if disclosure could undermine the protection of public interest

The right of access to documents is subject to exceptions when the disclosure could undermine the protection of the public interest, such as public security, international relations, monetary stability, court proceedings, inspections and investigations. According to the Court, the disclosure of documents relating to the investigation stage of the procedure laid down in Article 226 TEC could undermine the proper conduct of the infringement procedure inasmuch as its purpose could be jeopardised. A preparatory document relating to that stage of the procedure hence satisfies the conditions subject to which the Commission may refuse the access on public interest exceptions.

Access to Commission documents

Interporc (II) v Commission Case T-92/98

Access to Commission documents - Rule on authorship Exceptions based on public interest (court proceedings) and authorship rules

Exception on grounds of authorship rules

The exception based on the protection of the public interest (court proceedings) cannot enable the commission to escape from its obligation to disclose documents with a purely administrative matter. Furthermore and in accordance with the Code of Conduct adopted by Decision 94/90 , the exception

of the authorship rule provides that where a document held by an institution was written by a natural or legal person, a Member State, another Community institution or body or any other national or international body, the application must be sent directly to the author. The Commission decision refusing access to certain documents of the Member States gives sufficient reasons for applying the exception if it refers to the authorship rule.

Kuijer (I) v Council Case T-188/98

Right of Public access to Council documents - Council Decision 93/731- Protection of public interest - International Relations - Access to documents related to the activities of the Centre of the Information, Discussion and Exchange on Asylum (CIREA)

Right of public access to Council documents

The Court stated that, although parts of the requested document were covered by the exception "international relations", the Council had failed to grant partial access to the information not covered by the exceptions. Furthermore, this partial access would not have involved an intolerable burden of work for the institution. Thus, the Council did not interpret the exceptions in a restrictive manner and hence lacked to respect the principle of proportionality.

Granting of partial access to the information not covered by the exceptions

JT Corporation v Commission Case T-123/99

Right of Public access to Commission documents - Decision 94/90- Exception based on public interest - Inspection and investigation tasks - Authorship rules

Right of public access to Commission documents

Once again, the court ruled that before refusing access to a document as such, the Commission is required to examine whether partial access of those parts should be granted that are not covered by the exceptions. Therefore, a Commission

Examination whether partial access should be granted

decision refusing access to Community mission reports concerning a non-member state and to correspondence sent by the Commission to the Government of that state, is vitiated by manifest errors if it does not contain any indication that an examination took place. According to the Court, the "authorship" rule excluded the application of Decision 94/90 with regard to documents authored by Bangladesh authorities.

Right of public access to documents

Disclosure on grounds of public interest the field of international relations

Mattila v Commission and Council Case T-304/99

Right of Public access to documents- Protection of the public interest in the field of international relations

In this specific case, the Court states that the defendant institutions did not make a manifest error of assessment in deciding that disclosure of the documents at issue was likely to undermine the public interest in the field of international relations. Although the institutions did not consider the possibility of granting partial access, the Court denied the respective obligation, stating that, had the institution done so, they would not in any event have agreed to partial access. The failure to consider the question of granting partial access hence had no effect on the outcome of their examination. The Court also followed the Council's assertion that there are differences between drafts of statements, which are solely intended for internal use and a final text. The Court concluded that the institutions did not infringe the principle of proportionality by failing to grant partial access.

Right of public access to Commission documents

BAT v Commission Case T-111/00

Public access to Commission documents - Minutes of the Committee on excise duties - Protection of an institution's interest in the confidentiality of its proceedings

First, the Court ruled that the Committee's minutes do not fall

under the exception of the authorship rules since its deliberations and documents are to be regarded as being deliberations and documents of the Commission. Secondly, the Court stated that full access to these minutes was not to be granted because it could have revealed the position of the Member States on a disputed point concerning taxation of tobacco. Therefore the exception for 'confidentiality of the institutions' proceedings' was applicable.

Although any person may request access to documents without being required to give reasons, the Court underlined that the institutions have to consider private interests if they have been informed about them.

Finally, the Court stated that when discussions on a topic had been terminated, the institution no longer had any 'confidentiality' to protect.

Petrie v Commission Case T-191/99

Right of Public access to Commission documents-
Reasoned opinion - Exception relating to protection of the public interest- Inspections and investigations - Court proceedings - Authorship rules

The Court ruled that the exception for 'investigations' under the Commission's Decision 94/90 covered reasoned opinions issued during infringement proceedings. It also ruled that Article 1 TEU and Article 255 TEC are not directly applicable quoting the Case 26/62 Van Gend & Loos. The Court also rejected an infringement of Article 253 TEC (failure to state reasons).

Committee's minutes do not fall under the exception of the authorship rules

But full access to these minutes can be refused because it could reveal the position of Member States on a disputed point

Right of public access to Commission documents

Exceptions for 'investigations'

Verein für Konsumenteninformation v Commission Case T-2/03

Exemptions from concrete, individual examination of an access request.

Quotes:

"But an institution must therefore retain the right, in particular cases where concrete, individual examination of the documents would entail an unreasonable amount of administrative work, to balance the interest in public access to the documents against the burden of work so caused, in order to safeguard, in those particular cases, the interests of good administration (see, by analogy, Hautala v Council, cited in paragraph 69 above, paragraph 86)

However, that possibility remains applicable only in exceptional cases.

Accordingly, it is only in exceptional cases and only where the administrative burden entailed by a concrete, individual examination of the documents proves to be particularly heavy, thereby exceeding the limits of what may reasonably be required, that a derogation from that obligation to examine the documents may be permissible (see, by analogy, Kuijer II, paragraph 57).

It follows that the institution may avoid carrying out a concrete, individual examination only after it has genuinely investigated all other conceivable options and explained in detail in its decision the reasons for which those various options also involve an unreasonable amount of work."

Sison v Council cases T-110/03, T-150/03, T-405/03

Mandatory exceptions prevail over individual interests.

(An appeal against this judgment delivered was brought before the Court of Justice of the European Communities on 27 June 2005)

*Mandatory exceptions
prevail over individual
interests*

Quotes:

"It should be recalled, first, that, under Article 2(1) of Regulation No 1049/2001, the beneficiaries of the right of access to documents of the institutions are '[a]ny citizen of the Union, and any natural or legal person residing or having its registered office in a Member State'. That provision makes it clear that the purpose of the regulation is to guarantee access for everyone to public documents and not only access for the requesting party to documents concerning him.

*Institutions are obliged
to refuse access*

Second, the exceptions to access to documents, provided for by Article 4(1)(a) of Regulation No 1049/2001, are framed in mandatory terms. It follows that the institutions are obliged to refuse access to documents falling under any one of those exceptions once the relevant circumstances are shown to exist (see, by analogy, Case T 105/95 WWF UK v Commission [1997] ECR II 313, paragraph 58, and Case T 20/99 Denavit Nederland v Commission [2000] ECR II 3011, paragraph 39).

Consequently, even if those documents prove necessary for the applicant's defence in a Court case is not relevant.

In the case of a request for access to documents, where the institution in question refuses such access, it must demonstrate in each individual case, on the basis of the information at its disposal, that the documents to which access is sought do indeed fall within the exceptions listed in Regulation No 1049/2001 (see, by analogy, Joined Cases C-174/98 P and C-189/98 P Netherlands and Van der Wal v Commission [2000] ECR I 1, paragraph 24).

*Grounds why access is
denied must be clearly
demonstrated*

Demonstration of grounds in cases of confidentiality

However, it may be impossible to give reasons justifying the need for confidentiality in respect of each individual document without disclosing the content of the document and, thereby, depriving the exception of its very purpose (see, by analogy, *WWF UK v Commission*, cited in paragraph 51 above, paragraph 65).

Possibility to understand that reason

Under that case law, it is therefore for the institution which has refused access to a document to provide a statement of reasons from which it is possible to understand and ascertain, first, whether the document requested does in fact fall within the sphere covered by the exception relied on and, second, whether the need for protection relating to that exception is genuine."

Disclosure only with consent of MS

Scippacercola v Commission Case T-187/03

Disclosure only with consent of MS

Quotes:

"On the other hand, it is clear from Article 4(5) of Regulation No 1049/2001 that Member States are the subject of special treatment. That provision confers on a Member State the right to request the institution not to disclose a document originating from that Member State without its prior agreement. It should be recalled, as stated in paragraph 34 above, that that provision transposes Declaration No 35.

Preferential treatment of MS

The Member State has the right, either at the time of submitting a document or subsequently, to request an institution not to disclose a document originating from that Member State without its prior agreement.

MS not obliged to mention the reasons

Therefore, contrary to what the applicant submits, such a request from the Member State obliges the institution not to disclose the document in question.

In that regard, it must be pointed out that the Member State is not obliged to state reasons for its request under Article 4(5) of Regulation No 1049/2001 and that it is not for the institution to examine, when such a request has been made to it, whether non disclosure of the document in question is justified, inter alia, in the public interest.

In the light of the foregoing considerations, it must be concluded that, under Article 4(5) of Regulation No 1049/2001, where a Member State requests an institution not to disclose a document originating from that Member State without its prior agreement, the institution is bound by that request. Accordingly, the second plea in law put forward by the applicant, alleging that the defendant failed to assess the reasons given by the Greek State for its negative opinion concerning the communication of the document requested, is unfounded."

FAW Internationaler Tierschutzfonds v Commission Case T-168/02

Disclosure only with consent of MS

Disclosure only with consent of MS

Quotes:

"Article 4(5) of the Regulation places the Member States in a different position from that of other parties and lays down a *lex specialis* to govern their position.

Preferential treatment of MS

Under that provision, the Member State has the power to request an institution not to disclose a document originating from it without its 'prior agreement'.

The obligation imposed on the institution to obtain the Member State's prior agreement, which is clearly laid down in Article 4(5) of the Regulation, would risk becoming a dead letter if the Commission were able to decide to disclose that document despite an explicit request not to do so from the Member State concerned.

MS not obliged to state the reasons

Thus, contrary to what the applicant argues, a request made by a Member State under Article 4(5) does constitute an instruction to the institution not to disclose the document in question.

The Member State is under no obligation to state the reasons for any request made by it under Article 4(5) of the Regulation and, once it has made such a request, it is no longer a matter for the institution to examine whether non-disclosure of the document in question is justified in, for example, the public interest."

Turco v Council Case T-84/03

Disclosure of 'legal advices'

(Appeal was brought before the Court of Justice on 9 February 2005)

Quotes:

"Furthermore, pursuant to consistent case-law, all exceptions to the principle of the widest possible access to documents held by an institution should be interpreted and applied strictly and on a case-by-case basis.

Regulation No 1049/2001 now makes it clear that 'court proceedings' encompasses not only the pleadings and other documents lodged in court proceedings, but also 'legal advice' drawn up in the context of such actual or potential proceedings.

Thus, since legal advice drawn up in the context of court proceedings is already included in the exception relating to the protection of court proceedings, within the meaning of the second indent of Article 4(2) of Regulation No 1049/2001, the express reference to 'legal advice' among the exceptions necessarily has a meaning distinct from that of the exception relating to court proceedings.

Disclosure of 'legal advices'

Legal advices in the frame of court proceedings and other legal advices

However, the fact that a is a legal opinion cannot, of itself, justify application of the exception relied upon. Indeed, as previously observed, any exception to the right of access to the institutions' documents under Regulation No 1049/2001 must be interpreted and applied strictly (see, to that effect, Case T 20/99 Denavit/Nederland v Commission [2000] ECR II 3011, paragraph 45).

However, the generality of the Council's reasoning is justified by the fact that giving additional information, making particular reference to the contents of the legal opinion in question, would deprive the exception relied upon of its effect.

As regards the relevance of the need, identified by the Council in the contested decision, for protection of that advice, the Court finds that the disclosure of the legal opinion in question would have the effect of making public the Council's internal discussions on the question of the Community's powers regarding access of third country nationals to the labour market and, more widely, on the question of the legality of the legislative act to which it relates. "

Le Voci v Council Case T-371/03

Access to documents relating to internal competitions

Quotes:

"The applicant criticises the Council because no assessment of his test was made and because the Selection Board had no evaluation sheet, which made it impossible to apply non-discriminatory criteria to the tests and entailed a lack of transparency. He maintains that the Council's refusal to send him a marked copy of his test also gave rise to a lack of transparency.

Access to the marked tests of 'concours' can be refused if secrecy is in a public interest

Here secrecy is in public interest because it guarantees independence of selection procedure

As regards the applicant's complaint that he was not sent the marked version of his test, the Court considers that that assertion must be examined from the aspect of the rules on access to documents, whereby the concept of transparency is reflected in Community law.

Those texts (note: Article 255 TEC and Regulation 1049/2001) themselves place limits on the right of access to the documents of the institutions concerned, in particular for reasons of public interest (Case T-233/02 Alexandratos and Panagiotou v Council [2003] ECR-SC I-A-201 and II-989, paragraph 36).

As the Court of Justice has already had the occasion to point out, that secrecy was introduced with a view to guaranteeing the independence of Selection Boards and the objectivity of their proceedings, by protecting them from all external interference and pressures whether these come from the Community administration itself or the candidates concerned or third parties. Consequently, observance of that secrecy runs counter to divulging the attitudes adopted by individual members of Selection Boards and also to revealing all the factors relating to individual or comparative assessment of candidates (Case 89/79 Bonu v Council [1980] ECR 553, paragraph 5; Parliament v Innamorati, paragraph 18 above, paragraph 24; and Martínez Páramo and Others v Commission, paragraph 101 above, paragraph 44).

It follows that the applicant cannot validly rely on the concept of transparency in order to call in question the applicability of Article 6 of Annex III to the Staff Regulations (Case T-53/00 Angioli v Commission [2003] ECR-SC I-A-13 and II 73, paragraph 84)."

Groupe Danone v Commission Case T-38/02

Access to documents in competition cases

Quotes:

"According to settled case-law, the right of access to the file in competition cases is intended, in particular, to enable the addressees of statements of objections to acquaint themselves with the evidence in the Commission's file so that, on the basis of that evidence, they can express their views effectively on the conclusions reached by the Commission in its statement of objections (see Joined Cases T 191/98 and T-212/98 to T-214/98 *Atlantic Container Line and Others v Commission* [2003] ECR II-3275, paragraph 334 and the case-law cited).

Access to the file is thus one of the procedural safeguards intended to protect the rights of the defence and to ensure, in particular, that the right to be heard can be exercised effectively (see *Atlantic Container Line and Others*, paragraph 334 and the case-law cited).

If the Commission is found to have relied in the contested decision on inculpatory documents that were not in the investigation file and were not disclosed to the applicant, those documents should be excluded as evidence (see, to that effect, Case 107/82 *AEG v Commission* [1983] ECR 3151, paragraphs 24 to 30; *Cement*, paragraph 31 above, paragraph 382; and *Atlantic Container Line and Others v Commission*, paragraph 33 above, paragraph 338).

By contrast, where the documents which might have contained exculpatory evidence are not in the Commission's investigation file, the applicant must expressly ask the institution for access to those documents, and failure to do so during the administrative procedure will mean that its right in that respect is barred in any action for annulment which may be

Access to documents in competition cases

Access to files in competition cases is prerequisite for fundamental right to be heard

Inculpatory docs which have not been disclosed cannot be used as evidence

However, the fundamental right of being heard can only be asserted if the applicant requested access to docs

brought against the final decision (Cement, paragraph 31 above, paragraph 383, and Atlantic Container Line and Others v Commission, paragraph 33 above, paragraph 340).

The applicant's claim that the Commission failed to disclose such letters or internal memoranda in its possession cannot be accepted. According to settled case-law, the applicant may rely on an infringement of the rights of the defence only if it submitted to the Commission during the administrative procedure an express request for access to the documents in question."

L.2) European Court of Justice

Van der Wal and Netherlands v. Commission Joined Cases C-174/98 P and C-189/98

Right of public access to Commission documents

Appeal against Court of First Instance judgment in Case T-83/96 - Right of public access to Commission documents - Protection of the Public interest - Court proceedings

Commission must assess in each individual case whether documents fall within the exceptions of free access to documents

The Court stated that the Commission must assess in each individual case whether documents fall within the exceptions of free access to documents. According to the Court, the Court of First Instance erred in law when it interpreted Decision 94/90 as meaning that the protection of public interest in the context of court proceedings obliges the Commission to refuse access to documents which it drafted solely for the purpose of such proceedings. The Court of First Instance had thus interpreted the 'court proceedings' exception too broadly. Furthermore, this interpretation hinders the application of national procedural rules.

Hautala v. Council Case C-353/99

Appeal against Court of First Instance judgment in Case T-14/98 - Right of Public access to Council documents - Scope of access

The Court underlined the principles of proportionality and good administration by stating that, according to the Court of First Instance, Decision 93/731 must be interpreted as meaning that the Council is obliged to examine whether partial access should be granted not only to the document itself, but also to the information not covered by the exceptions. The principle of access to documents applies not only to documents as such but also to the information contained in them. The appeal of the Council was therefore dismissed.

*Council is obliged to
examine whether partial
access should be
granted*