

**SN 2970/3/00  
REV 3**

**NOTE FROM THE PRESIDENCY**

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to : Working Party on Information

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No. Cion prop.: 5817/1/00 INF 13 API 11 JUR 32 CODEC 109 (COM(00) 30 final/2)

No. prev. doc.: SN 2970/2/00 REV 2

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Subject : Proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents

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1. On 21 February 2000 the Commission forwarded to the Council the abovementioned proposal (COM(00) 30 final/2) which, under the new Article 255 of the EC Treaty, has to be adopted under the codecision procedure within two years of the entry into force of the Amsterdam Treaty, i.e. before 1 May 2001. Each institution is also drawing up specific provisions regarding access to its documents.
2. At the meeting of the Working Party on Information held on 18 February, the Commission representative gave a first detailed presentation of the proposal, which was later discussed by the Working Party at its meetings held under the Portuguese Presidency on 3 and 17 March, 12 April, 5 and 12 May and 23 June 2000.
3. In the light of the discussions and on the basis of the Commission proposal the Portuguese Presidency drew up a working document, of which the latest version dated 29 June 2000 (SN 2970/2/00 REV 2) was sent to delegations.

4. The French Presidency's approach is to resume discussion of the draft, Article by Article, at the meetings of the Working Party on 14 and 28 July, with a view to obtaining, before the summer break, a version containing all the delegations' contributions and faithfully reflecting their positions.
5. In September after the holidays, the Working Party will have to "clean up" the text and summarise the delegations' various positions in order to obtain a clear, tidy draft. This draft will be submitted to the Council (General Affairs) at its meeting on 20 November with a view to adoption of the common position.
6. As regards the European Parliament, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs has been asked to examine the European Commission's proposal and Mr Michael Cashman (PSE-UK) has been appointed principal rapporteur. The drafters of the Opinion are:
  - Ms Hanja MAIJ-WEGGEN (PPE-NL) for the Committee on Constitutional Affairs;
  - Ms Diemut THEATO (PPE-D) for the Committee on Foreign Affairs;
  - Ms Heidi HAUTALA (VERTS/ALE-FIN) for the Legal Affairs Committee;
  - Ms Astrid THORS (ELDR-FIN) for the Committee on Petitions.
7. The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs started its examination on 12 July and the results of its discussions on this point are contained in an information note drawn up by the Council General Secretariat on 13 July and distributed to the Working Party during its meeting on 14 July.
8. Delegations will find annexed the text of the working document, as it stands following the first meeting of the Working Party under the French Presidency on 14 July and after incorporation of the latest contributions by delegations. Changes to the original Commission proposal are indicated in bold or ~~strikeout~~. Comments and proposals from delegations are set out in the footnotes, alternative versions of the text being presented in bold.

**Proposal for a**

**REGULATION <sup>1</sup> OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**regarding public access to European Parliament, Council and Commission documents <sup>2</sup>**

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<sup>1</sup> DK/NL/FIN/S/UK: reservation as to the legal form, which might affect national legislation. NL: accordingly proposed that the following sentence be added to Article 1: "**National legislation on access to documents is unaffected by this regulation**" or "**This regulation does not preclude the right of Member States, in accordance with their national legislation, to grant access to documents authored by themselves**".

D: considered a Regulation to be the correct legal form. D endorsed NL's opinion, preferring the first version whereas NL preferred the second.

S: favoured a Decision.

FIN: also preferred a Decision, since the use of a Regulation, when not actually harmonising national rules governing access to documents, corrupted the sense of such use. The application of national provisions on confidentiality, in accordance with the principle of loyalty referred to in Article 10 of the EC Treaty, was sufficient to guarantee homogeneous implementation of legislation on access to documents.

A: asked the Council Legal Service whether a Regulation was the appropriate form, given that the second and third pillars, to which Article 255 applies, did not have this legal form, and what effect application of an EC Regulation would have on the second and third pillars. *The Legal Service confirmed that a Regulation was the correct form and that it applied to all the pillars.*

<sup>2</sup> I: proposed that the Council, the Commission and the European Parliament adopt a joint declaration calling on other institutions and bodies of the European Communities also to apply the provisions of this Regulation.

D: wondered if there was any point in such a declaration, as some other bodies (e.g. European Central Bank) had their own rules and regulations regarding transparency.

*Article 1*  
*General principle and beneficiaries*<sup>3</sup>

Any citizen of the **European** Union, and any natural or legal person residing or having its

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<sup>3</sup> DK/NL: the right of interested parties outside the EU to submit requests for access, if permitted by the Treaty, should be considered.  
FIN: it was not necessary to limit the beneficiaries to persons mentioned in Article 255.  
S: advocated extending the circle of beneficiaries, e.g. to include nationals and residents of the countries of Central and Eastern Europe which were applying for accession to the European Union.  
I: proposed to expand the circle of beneficiaries to include nationals of third countries not residing in a Member State, as provided for in the existing legislation concerning access to documents.  
D: asked the Legal Service to reply to the Italian delegation's comment under 2, 3 and 5.

registered office in a Member State, shall have ~~the a right of to the widest possible~~ access to the documents of the institutions within the meaning of this Regulation, without having to cite <sup>4</sup> reasons for their interest <sup>5</sup>, subject to the ~~exceptions laid down in Article 4.~~ **principles and the limits**<sup>6</sup> defined in the present Regulation.

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<sup>4</sup> S/UK: the word "state" was preferable to "cite".

<sup>5</sup> I: proposed that the phrase "without having to cite reasons for their interest" be deleted.

D: asked the Legal Service to reply to the Italian delegation's comments.

FIN: proposed that the reference to reasons for an interest be inserted in Article 4.

L: proposed that the reference to reasons for an interest be inserted in Article 3a.

<sup>6</sup> UK: proposed that "principles, limits **and conditions** &" be added.

*Article 2*  
*Scope*<sup>7 8 9</sup>

1. This Regulation shall apply to all documents<sup>10</sup> held by<sup>11</sup> the documents drawn up<sup>13</sup> by them or received from third parties and in their possession<sup>14</sup>.

~~Access to documents from third parties~~ ~~Access to documents from third parties~~ ~~Access to documents from third parties~~ ~~the date on which this Regulation becomes applicable.~~<sup>15</sup>

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<sup>7</sup> D: general reservation as long as no solution was found to the fundamental question, as to how to ensure compatibility between the Regulation on public access to documents of the three institutions and provisions governing the protection of documents needing such protection; called on the Legal Service to examine whether the exclusion of secret or confidential documents by way of Article 4 was legally defensible before the Court of Justice.

<sup>8</sup> *The competent authorities were currently examining solutions to the problem of the treatment of highly confidential documents relating to defence and military matters in the context of the present Regulation and the protection of such information in general. This issue would be addressed in a separate paper.*

<sup>9</sup> NL/FIN: the question of the treatment of highly confidential documents should be dealt with in the Articles on exceptions and procedure.  
FIN: The limits and general principles relating to this kind of document should be determined according to the procedure laid down in Article 255. However, Article 225 did not preclude differing points of view as regards the procedure to be followed for dealing with requests for access to different types of documents. If necessary, it was therefore possible to deal with requests for certain documents, relating to security and defence matters for example, in a special way guaranteeing more effective protection of highly confidential documents which the standard procedure did not allow. This of course meant that documents concerned by a special procedure should be defined clearly and precisely.

UK/D: welcomed the footnote concerning highly confidential documents.

<sup>10</sup> S: "**requests to the institutions for access to**" should be added before "all documents".

D/DK/FIN: shared S's opinion.

B: the phrase "**concerning a matter relating to the policies, activities and decisions falling within the institutions sphere of responsibility**" should be added after "all documents".

<sup>11</sup> B: wanted a definition of the term "held by", which was open to too many different interpretations.

D: suggested adding the word "**officially**" after "all documents".

<sup>12</sup> E: proposed ending the first sentence here and adding the following sentences: "**In the case of documents drawn up by one or more Member States, prior agreement shall be required before they may be released. Where agreement is not given, reasons must be provided.**"

B: agreed with the addition suggested by E on condition that a distinction was made between documents drawn up by the Member States and those originating from third parties who could not be given a right of veto; reasons would have to be given for any refusal on their part.

D: shared the Spanish delegation's concerns.

<sup>13</sup> S: as an alternative to excluding categories of documents, suggested defining the expression "drawn up". This definition should be based on the idea that a document itself or the matter to which it referred must have reached some grade of finality before it became accessible (and thus subject to registration).

<sup>14</sup> D: feared that the Regulation could adversely affect the rights of third parties and asked the Legal Service to examine the question.

<sup>15</sup> E: proposed that the second subparagraph of paragraph 1 be reinstated.

2. ~~This Regulation shall not apply to documents already published or accessible to This Regulation by other means.~~

~~It shall not apply where specific rules on access to documents exist.~~<sup>16</sup>

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<sup>16</sup> B: reservation as long as there was no clarification as to what was meant by "specific rules".  
DK: paragraph 2 should be redrafted. The new rules must not apply if specific rules grant wider access to documents than the present proposal allows.  
E: proposed that the second subparagraph be reinstated.  
I: agreed with the deletion of the sentence "It shall not & exist".  
NL: the Regulation should concur with the relevant provisions of the Aarhus Convention.  
FIN: proposed the following wording: "**This [Regulation] shall apply without prejudice to any specific rules on access to documents which grant the applicant a wider access to documents.**" (This act should be the basic instrument governing access to documents and its scope should therefore be as broad as possible.)  
S: this paragraph should read as follows: "This Decision shall apply without prejudice to specific rules on access to documents **which grant the public a wider right of access to documents held by the institutions.**"  
D: asked the Commission's Legal Service to examine whether the draft Regulation and especially the exceptions provided for in its Article 4 conflicted with the Aarhus Convention on access to environmental information.  
UK: wanted to maintain this paragraph, having regard inter alia to the Aarhus Convention. Referred to the Directive on access to information on the environment and to the new Commission proposal submitted recently to the Council; drew attention to the fact that there was a "loophole" with regard to implementation of the Aarhus Convention by the European Union; considered that the Community had to honour its commitments; therefore asked for paragraph 2 to be retained, possibly adding the words "**European Union**" between "specific" and "rules".  
Cion: pleaded in favour of retaining this paragraph and recommended that its note of 27 April 2000 on specific rules be read again before a decision was taken to delete it.

*Article 3*  
Definitions<sup>17 18</sup>

For the purposes of this Regulation:

- (a) "document" shall mean any content<sup>19</sup> whatever its medium (<sup>20</sup> written on paper or stored in electronic form<sup>21</sup> or as a sound, visual or audiovisual recording<sup>22</sup>); ~~only administrative documents shall be covered, namely documents concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility<sup>23</sup>, excluding texts for internal use such as discussion documents, opinions of departments, and excluding informal messages:~~<sup>24</sup>,

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<sup>17</sup> DK: it had to be clear from the definition of informal documents that they were drafted for internal use only. Documents distributed outside the institution should not be considered internal. Documents to or from committees or working groups should not be excluded from access.

A: the Regulation was addressed only to the institutions (e.g. Articles 3A, 4 and 5) and Member States were regarded as "third parties" (e.g. in Article 3(f)); the national administrations could not therefore be considered to be part of the Council as an institution within the meaning of Article 3(d); took the view that the Regulation did not compel Member States to provide access to European Union documents. If necessary, this point should be clarified in the Regulation.

<sup>18</sup> B: proposed the addition of the following point: "**(g) document of a personal nature/document designating a person by name: a document which contains an assessment or value judgment on or description of the behaviour of a natural person, designated by name or easily identifiable**".

<sup>19</sup> FIN: the word "content" should be replaced by "**information**".

UK: endorsed FIN's opinion.

<sup>20</sup> UK: the words "**including that**" should be added before "written on paper". Agreed entirely with the wording of point (a) proposed by the Commission.

<sup>21</sup> E: suggested deleting the words "or as a sound, visual or audiovisual recording".

I: endorsed E's opinion.

B/DK/UK: all information, whatever its medium, was included within the scope of this Regulation.

<sup>22</sup> B: argued for a very broad interpretation of the word "document" and upheld the text of the Commission proposal, backed by I/DK and UK. To take account of I and E's concerns, DK suggested stipulating that recordings of meetings had to be regarded as internal working documents used to draw up the minutes of meetings.

<sup>23</sup> B: The phrase "**concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility**" should be moved to Article 2.

<sup>24</sup> NL: preferred a broader definition making no provision for exceptions for specific categories of documents.

B: shared NL's opinion. Informal messages should be added to Article 4 (Exceptions).

S: proposed the following wording: "documents' shall mean **information recorded in any form, including information written on paper, stored in electronic form or on sound, visual or audiovisual recordings**."

UK: preferred the original Commission proposal for (a) (i.e. including the words "excluding texts for internal use such as discussion documents, opinions of departments and informal



- **informal messages;**<sup>25</sup>
- **contents which express opinions or reflect discussions and the provision of advice as part of preliminary consultations and deliberations within the institutions;**<sup>26</sup>

(b)<sup>27</sup> "institutions" shall mean the European Parliament, the Council and the Commission;

(c) "European"European Pa"European Parliament""European Parliament" shall mean Parliamentary bodies (the Conference of Presidents), Parliamentary departments;<sup>28 29</sup>

messages").

<sup>25</sup> E: suggested replacing "informal messages" with "**incomplete or unfinished documents**".

L: this indent should be retained.

NL/FIN: this indent should be deleted.

D: preferred to retain the current text.

<sup>26</sup> B: the meaning of this sentence should be clarified.

E: proposed that this wording be retained, except for the phrase "or reflect discussions and the provision of advice".

L: shared the opinion of FIN but without the addition of the adjective "informal".

NL: this indent should be deleted.

D: preferred to retain the current text.

FIN proposed the following wording: " - contents which express opinions or reflect discussions and the provision of advice as part of **informal** preliminary consultations and deliberations within the institutions **and which have not been forwarded to a third party;**"

<sup>27</sup> S proposed defining documents "drawn up" and "received" as follows:

"(b) **i) A document is "drawn up" when it has been handed out to a third party.**

**ii) If it has been handed out to a third party, it has been "drawn up" when a final decision has been taken on the matter to which it refers or the matter has been finally settled in any other way. If the document does not relate to a specific matter, the document is "drawn up" when it has been finally checked or approved by the institution.**

**iii) A memorandum or other note made exclusively for the preparation or presentation of a matter within an institution and which has not been handed out to a third party is only "drawn up", insofar as it does add factual information.**

**iv) A register or other list kept on a continuing basis is drawn up when it has been made ready for entries.**

(c) **A document is "received" by an institution when it has arrived at the institution or is in the hands of a competent official. A document which is addressed in person to an official of an institution is received by the institution if the document refers to a matter which falls within the competence of the institution and is not intended for the addressee solely in his or her capacity as holder of another post."**

<sup>28</sup> *The Council Legal Service drew delegations' attention to the fact that the composition and functioning of the institutions were already regulated by the Treaty. It therefore did not seem to be necessary to define the "European Parliament", "Council" and "Commission" for the*

- (d) ~~"Council"~~ "Council" shall mean the various ~~configurations~~ **formations** and ~~bodand bodies~~ of the Council ~~representatives~~ **preparatory preparatory preparatory bpreparatory bodies and its General Secretariat** <sup>30 31</sup> (and its ~~Representatives Committee and the working parties~~), the departments and the committees set up by the Treaty or by the legislator to assist the Council;
- (e) "Commission" shall mean the Members and their private offices, the Delegations and their private offices, the representations and delegations, committees set up by the Commission to help it exercise its executive powers;
- (f) "third party" shall mean any natural or legal person, or any entity, including the Member States, other Community institutions and bodies and non-member countries.<sup>32</sup>

*purpose of the present Regulation.*

<sup>29</sup> B/D/EL/E/I/NL/UK: agreed with the Council Legal Service opinion and considered that paragraphs (c), (d) and (e) could be deleted.

Cion: acknowledged that these concepts were already defined in the Treaty but said that the definitions had been mentioned here for the benefit of citizens. This could be made clear in a guide for citizens.

<sup>30</sup> *As pointed out in its opinion of 5 April 2000 (7594/00, points 14 to 17), the Council Legal Service continues to think that the inclusion of documents of the Council General Secretariat within the scope of the present Regulation is contrary to the Council's current interpretation and practice, according to which a "Council document" is taken to mean only documents held by all members of the Council or their representatives and delegates in one of its preparatory bodies. The extension of the scope of the present Regulation to cover documents of the General Secretariat would lead to the situation whereby the public could obtain access to documents which were not even known to the members of the institution and/or their delegates and representatives.*

<sup>31</sup> B/DK/D/EL/E/I/NL/FIN/UK: found it unnecessary to exclude the Council's General Secretariat from the scope of the Regulation. There was no objection in principle to granting access to documents which had not been seen by the members of the Council.

B: confirmed that, according to its lawyers, the General Secretariat was part of the Council.

DK: considered it necessary to indicate clearly that documents of the Council General Secretariat were included within the scope of the Regulation.

D: the definition of the Council should read as follows: **"Council" shall mean the various configurations of the Council, its preparatory bodies and its committees and working parties**".

E: approved the new wording.

I: the Secretariat-General of the Commission and the General Secretariat of the European Parliament should also be mentioned.

A: as the Regulation was directed at the institutions (e.g. Articles 3a, 4 and 5), it did not apply to national administrations. This should be made clear in the Regulation.

<sup>32</sup> B: the definition of "third party" should be clarified.

A: this paragraph allowed for several interpretations and should therefore be clarified: if the institution which received a request (e.g. the Commission) was regarded as "the institution concerned", the European Parliament and the Council would be "third parties". Under Article 4(3), the Parliament and the Council would then have the possibility of demanding that a document originating from their institution and requested from the Commission should

~~AA list of the coA list of the committees A list of the committees referred to in points (d) and (e) of the first part of the rules giving effect to this Regulation, as provided for in Article 10.~~

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remain confidential.

SN 2970/3/00 REV 3

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ANNEX

11  
DG F III  
**EN**

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Article 3A<sup>33</sup>

Applications<sup>34</sup>

1. All applications for access to a document shall be made<sup>35</sup> in writing **in one of the languages referred to in Article 314 of the EC Treaty**<sup>36</sup> and in a sufficiently precise manner to enable the institution to identify the document **with a reasonable administrative effort**. The institution concerned may ask the applicant for further details regarding the application.<sup>37</sup> [*ex Article 5(1)*]
2. In the event of repetitive applications and/or applications relating to very large documents **or a very large number of documents**, the institution concerned ~~shall~~ **may** confer with the applicant informally, with a view to finding a fair solution.<sup>38</sup> [*ex Article 5(1)*]

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<sup>33</sup> B: see Annex VI, Article 4a.

E: proposed that Article 3A be renumbered as Article 4 and the words "with &effort" be deleted.

<sup>34</sup> FIN: this Article should be placed after Article 4 on exceptions.

NL: was in favour of adding a paragraph reading as follows: "**If a Member State body receives an application for access to a document authored by an institution or one sent to it by an institution, the body shall forward the application to the institution that authored the document or sent it to the body. The applicant's request shall be notified accordingly.**"

EL/I/P/UK supported this addition.

A: endorsed the text proposed by NL but felt that the last sentence should be made clearer; wondered whether the procedure would be simplified if it were stipulated that access to a document could be granted only by the institution which had drawn it up; A therefore proposed the following text: "**If an institution receives an application for access to a document drawn up or sent by another institution, the institution concerned shall forward this application to the institution which drew up or sent the document.**"

<sup>35</sup> L: the words "without having to cite reasons for an interest", as in Article 1, should be inserted into this Article.

<sup>36</sup> *The term "official language" does not include Irish. However, in accordance with Article 21 of the EC Treaty, citizens have the right to address the institutions also in Irish.*

D: asked the Commission's Legal Service to examine whether the rights of third parties were likely to be adversely affected by this provision.

<sup>37</sup> B: felt the expression "may ask" was too weak, as it was not really binding on the institution.

FIN: the second sentence of paragraph 1 should form a new paragraph 2 and read as follows: "**If an application is not sufficiently precise the institution shall ask the applicant to specify the application and assist the applicant in doing this e.g. by providing the applicant with information on the use of public registers of documents.**"

D: agreed with FIN.

S: shared B's opinion and found the text proposed by FIN a good solution.

<sup>38</sup> B and DK asked for further clarification regarding the consequences of submitting repetitive applications.

B: with a view to 'active transparency' the institutions should inform the applicant which other institution possessed the document requested.

D: agreed with B.

DK: supported the proposed text on condition that it only referred to cases where the same person was applying for the same document.

FIN: the reference to special cases in paragraph 2 should be made in Article 5 and the words "repetitive applications and/or" should be deleted.

*Article 4*  
*Exceptions*<sup>39 40</sup>

1. The institutions shall refuse<sup>41</sup> access to document where disclosure could<sup>42</sup> ~~significantly~~<sup>43</sup> undermine the protection of:
- (a) ~~the public interest and in particular:~~ **as regards:**
- public security<sup>44</sup>,
  - defence and ~~international relations~~ **military matters,**
  - **international relations,**

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S: the submission of "repetitive applications and/or applications relating to very large documents or a very large number of documents" could not be a reason for refusal.

F: proposed that paragraph 2 be deleted.

<sup>39</sup> D: general reservation (see footnote to Article 2 (Scope): "general reservation as long as no solution was found &").

F: contradiction within the proposal which, on the one hand, aimed to increase access to documents in Articles 2 and 3, but on the other hand extended the scope of exceptions in Article 4. Regretted that medical confidentiality had not been reinstated.

<sup>40</sup> B: this Article should read as follows: see Annex VI.

NL: the following provision should be inserted in Article 4: "**The institutions may refuse access to documents containing personal opinions expressed by officials or preliminary documents that have not yet been sent to the rightful addressee.**" or "**A request for information may be refused if the request concerns documents in the course of completion or concerns contents which express personal opinions or reflect discussions and the provision of advice as part of preliminary consultations and deliberations within the institutions, taking into account the public interest served by disclosure.**" The Article should read as follows: see Annex I.

D: preferred the second version of NL's proposal.

FIN: this Article should read as follows: see Annex II.

S: this Article should read as follows: see Annex III.

I: general reservation in relation to the wording of paragraphs 1 and 2 of this Article.

<sup>41</sup> NL and A: preferred a positive wording for the introductory sentence: "The institutions shall **grant** access to documents **unless** ..."

<sup>42</sup> UK: agreed with the text of paragraph 1 adopted by the Presidency in the working document, but wanted to replace the word "could" by "**would**" or "**would be likely to**".

<sup>43</sup> DK: preferred the text of the Commission's proposal which included the word "significantly" (see also Annex IV).

UK: proposed that the word "**seriously**" be inserted before "undermine".

<sup>44</sup> A: proposed that an indent "- public order" be added and was in favour of exceptions for highly sensitive areas of justice and home affairs. Information was exchanged on condition that confidentiality was guaranteed. The publication of this kind of document would seriously harm such exchanges.

- relations between and/or with the Member States or Community or non-Community institutions,<sup>45</sup>
  - financial or economic interests,<sup>46</sup>
  - monetary stability;
  - the stability of the Community's legal order,<sup>47</sup>
  - court proceedings,
  - inspections, investigations and audits,<sup>48</sup>
  - infringement proceedings, including the preparatory stages thereof;<sup>49</sup>
  - the effective functioning of the institutions;
- (b) privacy and the individual, and in particular:<sup>50</sup>
- personnel files<sup>51</sup>,

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<sup>45</sup> DK: thought the wording too vague. It was difficult to see what would fall outside this limitation. The protection of external relations was duly covered by the other limitations proposed under Article 4 and this indent should therefore be deleted.

<sup>46</sup> B: this concept should be clarified.

<sup>47</sup> B: this concept should be clarified.

DK: did not consider this specific limitation justifiable in its own right, compared to the other limitations under Article 4, and the indent should therefore be deleted.

<sup>48</sup> DK: wording too general. The proposed limitation should be redrafted. Public access should not be refused where it would not seriously jeopardise the implementation of the measures in question.

<sup>49</sup> DK: wording too general. The proposed limitation should be redrafted. Public access should not be refused where it would not seriously jeopardise the implementation of the measures in question.

<sup>50</sup> E: proposed to use as a basis the much clearer wording of Article 7 of Law 2000-321 of 12 April 2000 on citizens' rights in their relations with local authorities (OJ of the French Republic of 13 April 2000): "- Administrative documents may not be released to the party concerned: - where the release thereof would undermine the confidential nature of individual privacy and personal files, medical confidentiality and commercial and industrial confidentiality; - if they contain an assessment or value judgment on a natural person, designated by name or easily identifiable; - where they show the behaviour of a person, if disclosure of such behaviour could be prejudicial to him. Medical information may be notified to the party concerned only through a medical practitioner whom he designates for that purpose." [unofficial translation]

<sup>51</sup> E: suggested that this indent be deleted.

information, opinions and assessments given in confidence with a view to **[the career of an official or other staff member, notably relating to]** recruitments or appointments,<sup>52 53</sup>  
~~an individual's personal details or documents containing information such as medical secrets which, if disclosed, might constitute an infringement of privacy or facilitate such an infringement;~~

**personal data as defined by Community legislation in this field;**<sup>54 55 56</sup>

- (c) ~~commercial and industrial secrecy or the economic interests of a specific natural or legal person, and in particular:~~
- ~~\_ business and commercial secrets,~~
  - ~~\_ intellectual and industrial property,~~
  - ~~\_ industrial, financial, banking and commercial information, including information relating to business relations or contracts,<sup>57</sup>~~
  - ~~\_ information on costs and tenders in connection with award procedures<sup>58 59</sup>.~~

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<sup>52</sup> DK: this specific limitation was not justifiable in its own right, compared to the other limitations under Article 4. The number of proposed limitations concerning private interests could be limited without reducing the scope or clarity of the provisions. Therefore, this indent should be deleted.

<sup>53</sup> E: suggested that this indent be deleted.

<sup>54</sup> B: the person concerned should have access to personal data relating to him/her.

<sup>55</sup> E: the rest of these indents are repetitive. Under no circumstances may personal data relating to contracts or appointments be excluded; the institutions must make a particular effort to achieve transparency in this field, since it is assumed that selection and appointment of individuals are based on objective criteria.

<sup>56</sup> D: proposed the following addition: "**The protection of personal data does not preclude access to documents**

**1. if the data relate to the holder of a public office;**

**2. if the data refer to his cooperation in an activity in connection with his functions;**

**3. if interests of the holder of a public office which need to be protected do not preclude it.**

**Personal data of a person taking part in proceedings may be made public if the applicant's interest in having access to such information overrides the interest in preserving the confidentiality of such data."**

<sup>57</sup> DK: this specific limitation was not justifiable in its own right, compared to the other limitations under Article 4. The number of proposed limitations concerning economic and financial interests could be limited without reducing the scope or clarity of the provisions. Therefore, this indent should be deleted.

D: agreed with DK's proposal.

<sup>58</sup> E: the following words should be added: "**before these procedures are completed.**".

<sup>59</sup> DK: this specific limitation was not justifiable in its own right, compared to the other limitations

2. **Access to a document may be denied if its disclosure could undermine the effectiveness of the institutions' decision-making process.** <sup>60</sup>

~~(d) confidentiality as requested by the third party having supplied the document or the information, or as required by the legislation of the Member State.~~

3. **The institutions shall not release a document if the Member State or the other third party from which the document originates has requested the institutions not to disclose it without its prior agreement.** <sup>61</sup>

**In case of a request for a document sent to an institution before the entry into force of this Regulation, the institution concerned shall request the prior agreement of the third party having supplied it.** <sup>62 63 64 65</sup>

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under Article 4. The number of proposed limitations concerning economic and financial interests could be limited without reducing the scope or clarity of the provisions. Therefore, this indent should be deleted.

D: agreed with DK's proposal.

<sup>60</sup> DK/F: the wording of this paragraph was too general and this specific limitation did not offer any real advantage compared to the other limitations under Article 4. It should be clarified further or deleted.

D: agreed with DK's proposal. Article 4(2) should be deleted, since the definition of "document" in Article 3(a) made this paragraph superfluous.

F: proposed that paragraph 2 be deleted.

<sup>61</sup> B: Member States and third parties should not be placed in the same category. Third parties should not be able to oppose the disclosure of documents which they are obliged to send to the institution, but the situation could be different for documents which they send voluntarily.

L: paragraph 1 was unrealistic. F agreed and thought a text resembling Declaration 35 would be necessary: ("The Conference agrees that the principles and conditions referred to in Article 191a(1) of the Treaty establishing the European Community will allow a Member State to request the Commission or the Council not to communicate to third parties a document originating from that State without its prior agreement.")

A: entirely agreed with the new wording of the paragraph, or especially the Union's activities under the second and third pillars. The reference to "the Member State or the other third party" was not clear, since the Member States were included in the definition of "third party" (see Article 3(f)).

<sup>62</sup> DK: the third party concerned should not have a *de facto* right of veto. Refusal should be based on the limitations under Article 4. The opinion of the third party should be taken into consideration even if the institution maintained the right to take the final decision on public access. Third party interests were protected by the other limitations under Article 4 as well as by existing rules on copyright, intellectual property rights, etc.

EL: documents originating from third parties should not be released without their prior agreement.

UK: proposed that paragraph 3 be worded as follows: "The **relevant institution** shall not release a document **without the prior agreement of** the third party from which the document originates."

P: endorsed this proposal.



*Article 5<sup>66</sup>*  
*Processing of initial applications<sup>67</sup>*

1. ~~All applications for access to a document shall be in a manner to enable the institution to identify the document. The institution shall confer with the applicant for further details regarding the application.~~

*[moved to Article 3 A]*

~~In the event of repetitive applications and/or applications of a similar nature, the institutions concerned shall confer with the applicant in order to reach a fair solution.~~ *[moved to Article 3 A]*

1. Within one month of registration of the application, the institution shall, in a written and reasoned reply<sup>68</sup>, inform the applicant of the outcome of the application.<sup>69</sup>
2. Where the institution gives a negative reply to the application, the applicant, within one month of receiving the reply, shall be entitled to request the institution to reconsider its position, failing which he shall be deemed to have withdrawn the original application.<sup>70</sup>

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<sup>63</sup> B favoured the insertion of a paragraph to protect the identity of persons who gave the institutions information about illegal practices.

<sup>64</sup> I: proposed that the two existing paragraphs be replaced with the following text: "**In case of a request for a document originating from a Member State or another third party, the institution concerned shall request the prior agreement of the Member State or of the third party before releasing it.**".

<sup>65</sup> E: proposed that these two paragraphs be deleted. Preferred the alternative text proposed for Article 2(1).

<sup>66</sup> B: see Annex VI, new Article 5.

E: reiterated its proposal that a collegiate body be set up with responsibility for examining individual appeals. This proposal would lead to the reorganisation of Articles 5 and 6 (see Annex V).

<sup>67</sup> S: Article 5 failed to lay down a basic requirement for speedy handling of applications.

<sup>68</sup> NL: the words "in a written and reasoned reply" should be deleted.

<sup>69</sup> FIN: this paragraph should read as follows: "**Applications for access to documents shall be handled promptly and in any case within one month from the registration of the application, the institution shall either grant the applicant access to all the documents applied for or in a written reply inform the applicant of the reasons for the total or partial refusal as well as of the right to make a confirmatory application in accordance with paragraph 2.**"

D and NL: agreed with FIN.

<sup>70</sup> B: it should be specified whether the one-month time limit applied to the sending of the requested documents or to the reply to the application.

3. In exceptional cases, the one-month time-limit provided for in paragraph 3.1.1 may be extended by one month, provided that the applicant is notified of the extension in writing. <sup>71</sup>
4. Failure to reply within the prescribed time-limit shall be treated as a negative response.

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FIN: this paragraph should read: "**In case of a total or partial refusal the applicant may within one month from receiving the institution's reply make a confirmatory application asking the institution to reconsider its position.**"

D: agreed with FIN.

<sup>71</sup> FIN: this paragraph should read: "**In exceptional cases, e.g. in the event of an application relating to very large documents or to a very large number of documents, the one-month time-limit ...**"

D: agreed with FIN.

*Article 6*<sup>72</sup>  
*Processing of confirmatory applications; remedies*<sup>73</sup>

2. Where the applicant submits a confirmatory application within one month of registration of the application. If the institution decides to maintain its refusal to grant access to the document requested, it maintains its refusal to grant access to the document and inform the applicant of the remedies open to him, namely court proceedings and a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively, **and in the relevant provisions of the Treaty on European Union.**<sup>74 75 76</sup>
3. In exceptional cases, the time-limit provided for in paragraph 1 may be extended by one month, provided that the applicant is notified in advance and that detailed reasons are given.<sup>77</sup>
4. ~~Failure by the institution to reply within the prescribed time-limit shall be treated as a positive decision~~<sup>78</sup> shall entitle the applicant to refer the matter to the Ombudsman and/or the Court of Justice, under the relevant provisions of the Treaties.<sup>79</sup>

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<sup>72</sup> B: proposed new Articles; see Annex VI, Articles 6, 6a and 6b.

<sup>73</sup> S: Article 6 failed to lay down a basic requirement for speedy handling of applications.

UK: as currently drafted, the procedure for processing applications for documents was too unwieldy and should be made more user-friendly. One possibility would be to require the institution to confirm receipt of an application for access, e.g. in the form of a standard reply explaining the processing procedure (e.g. "If you do not receive a reply to your application within one month following this letter, this will be equivalent to a refusal. In this case, you will have one month in which to submit a confirmatory application.").

<sup>74</sup> FIN: this paragraph should read as follows: "**A confirmatory application shall be handled promptly and in any case within one month from the registration of such application, the institution shall either grant access to the documents requested or in a written reply state the reasons for a total or partial refusal. Should the institution deny the access in total or in part it shall** inform the applicant of the remedies open to him, namely **instituting** court proceedings **against the institution and/or making** a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively, and in the relevant provisions of the Treaty on European Union." D: agreed with the FIN proposal.

<sup>75</sup> I proposed to delete the end of the paragraph starting from "namely Court proceedings..." and replace it by "**according to the relevant provisions of the Treaty**".

<sup>76</sup> L: proposed that the last sentence, starting with "**and in the relevant &**", be deleted.

<sup>77</sup> FIN: this paragraph should read: "In exceptional cases, **e.g. in the event of the application relating to very large documents or to a very large number of documents**, the time-limit provided for in paragraph 1.. (rest of text unchanged)".

D: the words "prescribed time-limit" should be replaced by "time limit provided for in paragraph 1".

A: also felt that this paragraph should be supplemented with examples.

<sup>78</sup> I preferred the original text ("Failure by the institution to reply within the prescribed time limit shall be treated as a positive decision").

D: opposed I's proposal.

<sup>79</sup> EL: the third paragraph could be formulated in more general terms, e.g.: "**&.. entitle the applicant to use all legal rights emanating from the Treaties.**"

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**FIN:** this paragraph should read: "Failure by the institution to reply within the prescribed time-limit **shall entitle the applicant to avail itself of the remedies mentioned in paragraph 1.**"

*Article 7<sup>80</sup>*  
*Exercise of the right to access*

1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy.<sup>81</sup>

The costs of his doing so may be charged to the applicant.<sup>82</sup>

**If a document is already published and is easily accessible to the applicant<sup>83</sup>, the institutions may inform him how to obtain it.<sup>84</sup>**

2. ~~Documents shall be supplied in an existing language version, regard being had to the preference expressed by the applicant.<sup>85</sup>~~

~~An edited version~~ **Parts** of the requested document shall be provided if ~~part of the document~~ **those parts is are not** covered by any of the exceptions ~~provided for~~ in Article 4.<sup>86</sup>

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<sup>80</sup> B: see Annex VI.

F proposed a new Article 6 (ex-Article 7) (see Annex V).

<sup>81</sup> NL/FIN: the following words should be added: **""according to his preference"**.

D/L/P/S: agreed with NL and FIN.

DK: access to documents "on the spot" should not be carried out unless the applicant so wishes or if it is absolutely necessary due to special circumstances.

<sup>82</sup> B: charges should remain reasonable and not exceed real costs.

FIN: this paragraph should read: **"The direct costs relating to the exercise of the right of access to documents may be charged to the applicant."**

DK/D: agreed with FIN.

<sup>83</sup> A: the following phrase should be added: **" &, for example via the Internet, &"**.

<sup>84</sup> B: wondered if the word "legally" should be inserted, in order to discourage leaks.

FIN: this paragraph should read: **" If a document is already published and is easily accessible to the applicant, the institution may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document."**

DK/I/L/NL: agreed with FIN.

<sup>85</sup> E: this paragraph should read: **"Documents shall be supplied in the language version expressed by the applicant, as long as the actual language regime allows it."**

I proposed the following wording: **"Documents shall be supplied in one of the official languages provided for in relevant Community law, regard being had to the preference expressed by the applicant."**

F/L: proposed that the first sentence of paragraph 2 be reinstated.

<sup>86</sup> A preferred the following wording: **"If parts of a document, covered by any of the exceptions provided for in Article 4, can be separated from the other parts of the document without prejudice to the confidentiality of the information to be protected and the sense of the remaining part of the document, this remaining part shall be released."**

EL/E/L/I and P: agreed with the above proposal (A).

FIN: the second paragraph should read: **"If only parts of the document requested are**

*Article 8*  
*Reproduction for commercial purposes or other forms of economic exploitation*<sup>87</sup>

An applicant who has obtained a document exploit it for any other economic purposes without the prior authorisation of the right-holder.<sup>88</sup>

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**covered by the exceptions in Article 4 the remaining parts of the document shall be released."**

NL and S: agreed with the above proposal (FIN).

DK: agreed with the FIN proposal or the Presidency proposal.

<sup>87</sup> B: the text should be more specific concerning the right-holders and sanctions.

DK: proposed that the Article be deleted. Experience had shown that the existing rule had not been applied. The proposed text could be interpreted as limiting the circulation of information by the media. The interests of third parties were protected by existing rules on copyright, intellectual property, etc. The legal consequences of exploitation for private purposes contrary to the provisions proposed were not clear from the text.

NL: in the information age, the availability and accessibility of public sector information should be maximised. Besides, Article 8 was not the kind of provision normally found in rules concerning access to information. The cases considered in the Article were usually covered by copyright law. Article 8 could be deleted or, in any case, no prior authorisation should be needed to reproduce or exploit documents originating within European institutions.

S: Article 8 should be deleted. No examples had been given of the use of a corresponding rule under the existing system. Furthermore, copyright was already protected in all Member States under rules based on international cooperation. Under no circumstances should there be a rule restricting reporting by the media.

D: agreed with DK, NL and S.

<sup>88</sup> FIN: the paragraph should read: "**This [Regulation] shall be without prejudice to any existing rules on copyright which may limit the applicant's right to reproduce or exploit the released documents.**"

D: agreed with FIN.

*Article 9*  
*Information and registers*

Each institution shall take the requisite measures to inform the public of the rights they enjoy of the result of this Regulation. Furthermore, to make it easier for result of this Regulation. Furthermore, to make it easier for result of this Regulation, each institution shall provide access to a register of documents<sup>89</sup>.

**Each institution shall make accessible to the public the documents referred to in Article 3.**<sup>90 91 92</sup>

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<sup>89</sup> B: the reference to the register should be made clearer.

S: the reference to registers should be made into a separate paragraph. It should include an obligation to register all documents under the access regime and a duty to include information about each document.

<sup>90</sup> *The Council Legal Service considered that this provision had no relation to the subject of the present Regulation and was not covered by Article 255 of the EC Treaty, according to which the Council and the European Parliament were supposed to adopt rules on access to documents. The drawing up of a list of preparatory bodies and committees and its publication was a possibility left to the discretion of each institution under its general policy of transparency and information to the public. According to the Council Legal Service, a reference to such lists in the rules on access to documents could be seen as an invitation to request access to all documents considered or drawn up by the preparatory bodies and committees without specifying which ones. This would run contrary to the objective of the register of documents, which was precisely to enable citizens to identify the specific documents which interested them, thereby reducing the institutions' administrative burden involved in researching and dispatching documents which did not interest the applicant.*

F/L: agreed with the Legal Service's opinion.

<sup>91</sup> B: proposed that the reference to Article 3 be deleted.

<sup>92</sup> F/I/P and UK: proposed that the second paragraph be deleted.

*Article 10*  
*Effect*

Each institution shall adopt in its rules of procedure the provisions required to Each institution shall ad Regulation. Regulation. Those provisions shall take effect on & [three months Regulation. Those provision Regulation].<sup>93</sup>

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<sup>93</sup> B: implementing provisions should be adopted speedily if the time limit mentioned in Article 255 was to be met (1 May 2001). The three institutions could issue a joint declaration to this effect.



*Article 11*  
*Entry into force*

This Regulation shall enter into force on the third day following its publication in the Official Journal of the European Community. [This Regulation shall enter into force on the date of adoption of this Regulation].

This Regulation shall be binding in its entirety and directly applicable in all Member States.<sup>94 95</sup>

Done at Brussels,

*For the Council*

*For the European Parliament*  
*The President*

*The President*

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<sup>94</sup> B: it should be clarified whether Member States should implement the Regulation when requests for access to documents are submitted to them or whether they may continue to apply their own national legislation.

D: agreed with B and therefore asked the Commission's Legal Service to check whether the text provided sufficient guarantees that the Member States would not undermine the Regulation by allowing access to European Union documents in their possession.

<sup>95</sup> S: the second paragraph should be deleted. See Swedish delegation's remarks in footnote 1.

PROPOSAL FROM THE DUTCH DELEGATION<sup>96</sup>

*Article 4*

*Exceptions*

1. The institutions shall **grant** access to documents **unless** disclosure **would significantly** undermine:  
**international relations, defence or public security,**  
monetary stability.
  
2. **The institutions may refuse access to a document if the public interest served by disclosure does not outweigh the interest of:**
  - (a) **court proceedings;**
  - (b) **the protection of commercial and industrial secrets;**
  - (c) **inspections, investigations and audits;**
  - (d) **privacy and protection of the individual;**
  - (e) **financial or economic interests of the Community or Member States;**
  - (f) **disproportionate advantage or disadvantage to the natural or legal parties concerned or to third parties.**

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<sup>96</sup> D: agreed with NL, subject to provisions concerning classified documents; point 2(b) should be supplemented by provisions on data protection.

PROPOSAL FROM THE FINNISH DELEGATION*Article 4**Exceptions*

1. The institutions shall refuse access to a document where **the disclosure of the information contained in it could seriously** undermine the protection of
  - national security,**
  - public safety,**
  - defence and military matters,
  - international relations, **relations between the Member States and Community institutions or Community institutions and non-Community institutions**<sup>97</sup>,
  - financial, monetary or economic policy of the Community or Member States<sup>98</sup>,
  - prevention, investigation and prosecution of criminal activities,
  - the purpose** of inspections, investigations and audits,
  - equality of parties concerning court proceedings**<sup>99</sup>,
  - privacy and personal integrity, in particular as protected by Community legislation on data protection<sup>100</sup>,
  - legitimate commercial and other economic interests of a private or public nature<sup>101</sup>.
  
2. Access to a document may be denied if its disclosure could **seriously** undermine the effectiveness of the decision-making process **of the institution concerned**<sup>102</sup> unless there is an overriding [public] interest in the disclosure of the document.

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<sup>97</sup> This indent covers the need to protect the negotiations between the Commission and a Member State in the early stages of infringement procedures.

<sup>98</sup> This indent also covers monetary stability, which is part of the Community's monetary policy.

<sup>99</sup> The institutions' standing as a party to any court proceedings is protected by this indent. The court proceedings as such are not in need of special protection.

<sup>100</sup> This indent covers personnel files and personal data.

<sup>101</sup> This indent covers business and commercial secrets; intellectual and industrial property; industrial, financial, banking and commercial information as well as information on costs and tenders in connection with award procedures.

<sup>102</sup> It is important that this exception be limited to the decision-making of the institution to which the document relates. Thus, documents relating to the preparation of a Commission proposal could not be kept secret on the basis of this exception after the Commission had adopted the proposal, even if discussions on the basis of the proposal were still continuing in the Council.

3. **The institutions shall not release a document if the Member State from which the document originates has requested the document not to be disclosed without its prior agreement.**

**The institutions shall not release a document if a third party [other than a Member State] from which the document originates has requested the document not to be disclosed and can be deemed to have a legitimate interest in the non-disclosure under the exceptions mentioned in paragraph 1.** <sup>103</sup>

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<sup>103</sup> A legitimate interest shall be deemed to exist e.g. in the case of highly confidential documents on military and defence matters. This could even be stated in some form in the text of this act or in the rules of procedure of each institution.

PROPOSAL FROM THE SWEDISH DELEGATION

*Article 4*  
*Exceptions*

1. The institutions shall, **subject to paragraph 2**, refuse access to documents where disclosure **of the information contained therein** could **seriously** undermine the protection of:

**national** security,  
security of the EU institutions,  
defence and international relations,  
public safety,  
~~relations between and/or with the Member states or Community or non-Community institutions,~~  
prevention and prosecution of criminal activities,  
**privacy**,  
**private or public commercial** and other economic interests,  
**financial and** monetary stability,  
~~the stability of the Community's legal order,~~  
**equality of parties to** court proceedings,  
**the purpose of** inspections, investigations, **supervision** and audits,  
~~infringement proceedings, including the preparatory stages thereof,~~  
~~the effective functioning of the institutions~~  
**confidentiality as presumed by third parties having supplied the information before this Decision came into force.**

**The Council and the Commission shall refuse access to documents as requested by the Member States having supplied them.**

(b)---  
(c)---  
(d)---

2. **The institutions shall not refuse access if there is an overriding public interest in the disclosure and in particular the public interests of health and protection of the environment.**



PROPOSAL FROM THE DANISH DELEGATION*Article 4*  
*Exceptions*

1. The institutions shall refuse access to documents where disclosure could **significantly** undermine the protection of

(a) ~~the public interest and in particular:~~ **as regards:**

- public security,
- defence and ~~international relations~~ **military matters,**
- **international relations,**
- relations between and/or with the Member States or Community or  
~~non-Community institutions,~~
- financial or economic interests,
- monetary stability,
- the stability of the Community's legal order,
- court proceedings,
- inspections, investigations and audits,<sup>104</sup>
- infringement proceedings, including the preparatory stages thereof;<sup>105</sup>
- the effective functioning of the institutions;

(b) privacy and the individual, ~~and~~ in particular:

- personnel files,

~~information, information, opinions and assessments given in confidence with a view to~~ information, opinions and a  
~~or other staff member, notably relating to~~ recruitments or appointments,

<sup>104</sup> The wording is too general, and the proposed limitation should be redrafted.

<sup>105</sup> Again, the wording of this exception is too general. Public access should not be refused, when it does not jeopardise the implementation of the measures. The decision whether to refuse access must be based on an assessment of specific damage likely to be caused by disclosure, measured against the right of public access. The proposed exception should be redrafted accordingly.

~~an individual's personal data and individual's personal details or documents or information which, if disclosed, might constitute an infringement;~~

**personal data as defined by Community legislation in this field.**

- (c) ~~commercial and industrial secrecy or the economic~~ economic interests of economic legal person, and in particular:

business and commercial secrets,

intellectual and industrial property,

~~industrial, financial, banking and commercial information, including information~~

~~business relations or contracts,~~

~~information on costs and tenders in connection with award procedures.~~

2. **Access to a document may be denied if it is of the institutions' decision-making process.**<sup>106</sup>

~~(d) confidentiality as requested by the third party has information, or as required by the legislation of the Member State.~~

3. **The institutions shall not release a document if the Member State or the other third party from which the document originates has requested the institutions not to disclose it without its prior agreement.**

**In case of a request for a document sent to an institution before the entry into force of this Regulation, the institution concerned shall request the prior agreement of the third party having supplied it.**<sup>107</sup>

<sup>106</sup> The wording of this paragraph is too general, and this specific restriction does not offer any real advantage compared to the other limitations under Article 4. Should be clarified further or deleted.

<sup>107</sup> The third party concerned should not have a *de facto* right of veto. Refusal should be based on the limitations under Article 4. The institution must retain the right to take the final decision on public access, whilst taking account of the opinion of the third party. Third party interests are protected by the other limitations under Article 4 as well as by existing rules on copyright, intellectual property rights, etc.



**PROPOSAL FROM THE FRENCH DELEGATION** <sup>108 109</sup>*New Article 5*

- 1. An interinstitutional body responsible for considering applications for access to documents (hereinafter referred to as "body") is hereby established.**

**The body's task shall be to process all applications for access to documents made to one of the three institutions which are referred to it after being refused by an institution. The body shall issue an opinion on whether a document may be released and shall forward that opinion to the relevant institution.**

**The institutions may consult the body on any matter concerning the possibility of releasing of documents under this Regulation.**

- 2. The body shall comprise one representative of the European Parliament, the Council, the Commission, the Court of Auditors, the Court of First Instance and the European Ombudsman. Each representative shall designate an alternate.**

**The body shall elect a chairman from among its members, who shall have a casting vote.**

**The persons appointed shall act with complete independence. In performing their duties, they shall not receive instructions from any other body.**

- 3. The body's budget and running costs shall be funded equally by the European Parliament, the Council and the Commission.**

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<sup>108</sup> Memorandum from the French authorities on public access to European Parliament, Council and Commission documents.

<sup>109</sup> **D**: scrutiny reservation; wondered what was the added value of setting up an additional body, given that the applicant already had the possibility of referring to the Ombudsman or the Court in the event of his confirmatory application being rejected.

### *New Article 5a*

1. All applications for access to a document shall be made in writing in a sufficiently precise manner to enable the institution to identify the document. The institution concerned may ask the applicant for further details regarding the application.
- ~~2. In the event of repetitive applications and/or applications relating to very large documents, the institutions concerned shall confer with the applicant informally, with a view to finding a fair solution.<sup>110</sup>~~
2. **The institution shall reply within one month of registration of the application.**  
**Failure to reply within that time-limit shall be equivalent to a refusal of the application.**
3. **The applicant may refer any express or tacit decision refusing an application to the body, within one month of either express refusal or expiry of the one-month-time limit in paragraph 2. Referral shall have the effect of suspending that time limit.**  
**A decision must first be referred to the body before any court action can be taken on it.**  
**The body shall have one month to issue an opinion on whether documents may be released and forward it to both the institution concerned and the applicant.**
4. **The body's opinion shall not be binding upon the institution concerned.**
5. **If, following the issue of the body's opinion, the institution concerned decides not to forward the document to the applicant, it must give reasons for its decision, which it must notify to the applicant, stating in its notification the remedies open to him under Article 230 TEC.**
6. **Appeal shall lie only against the institution's decision.**

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<sup>110</sup> Paragraph 2 has been moved to the new Article 6.

7. In exceptional cases, the time-limit provided for in paragraph 2 may be extended by one month, provided that the applicant is notified in advance and that detailed reasons are given.

*New Article 6 (ex Article 7)*  
*Exercise of the right to access*

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

**If the application relates to particularly large documents, the institution may favour on-the-spot consultation.**

**The institution is not bound to consider applications which are repetitive or blatantly abusive.**

Access costs may be charged to the applicant.

2. Documents shall be supplied in an existing language version, regard being had to the preference expressed by the applicant.

An edited version of the requested document shall be provided if part of the document is covered by any of the exceptions provided for in Article 4.

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PROPOSAL FROM THE BELGIAN DELEGATION

*Article 4*  
*Exceptions*

1. **Exceptions to this Regulation may be invoked only insofar as they are listed in this Regulation.**<sup>111</sup>
2. **The institutions shall grant access to documents unless disclosure would significantly undermine:**
  - defence and military matters;**
  - privacy and the protection of the individual, unless the person concerned has agreed to such access;**<sup>112</sup>
  - confidentiality of the positions and opinions expressed in the context of proceedings.
3. **The institutions shall grant access to documents unless they establish that the interest of disclosure is outweighed by the protection of one of the following interests:**
  - public security;**
  - public order;**
  - the confidential nature of international relations;**
  - relations between the Member States and the Community institutions, between the Community institutions themselves and between the Community institutions and other institutions;**
  - protection of confidential commercial or industrial information, insofar as it is designated as confidential, disclosure of which may seriously damage the legitimate commercial interests of those to whom such information relates;**

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<sup>111</sup> The recitals may also state that the exceptions must be interpreted restrictively in the light of Article 255 TEC, which introduces a right, and of the existing case law of the Court of Justice.

<sup>112</sup> The extent to which this overlaps with the Regulation on the protection of personal data should be examined.

protection of the financial, monetary and economic policy of the Community or of a Member State;  
the detection and prosecution of punishable offences;  
equality of the parties to legal proceedings;  
non-disclosure of the identity of a person who has confidentially provided the institution with the document or the information in order to report a punishable offence or an offence deemed to be punishable;  
inspections, investigations and audits.

4. The institutions shall refuse access to a document originating from a Member State without the latter's prior agreement. Where no agreement is given, the Member State shall state the reasons for doing so.

The institutions shall refuse access to a document originating from another EU institution if, on the basis of its rules governing public access, the latter considers that no access may be granted.

The institutions shall refuse access to a document originating from a third party other than a Member State or an EU institution if the latter expressly requests non-disclosure of the document and has a legitimate interest in such non-disclosure on the basis of the exceptions referred to in paragraphs 2 and 3.

The institutions shall refuse access to a document originating from a third party other than a Member State or an EU institution which has come into their possession prior to the entry into force of this Regulation if that third party does not agree to disclosure.

5. The institutions may refuse a request for access:  
if the request relates to documents which are as yet incomplete, unless they have been taken into account in decision-making;  
if the request relates to informal messages;  
if the request relates to a recommendation or an opinion communicated to the institution on a voluntary and confidential basis;  
if the request relates to the subject of the application remains unclear following a request from the institution to reformulate or supplement the initial request;  
the request covers a large number of documents or the document requested is in itself very large and entails an unreasonable effort on the part of the institution;  
repeated access to the same document is sought.
6. Where the application relates to a document of a personal nature, the applicant must demonstrate an interest. The requested interest shall be present only where the legal situation of the person concerned by the document or by the decision in preparation for which the document was drawn up or to which it relates may be directly, personally and adversely affected. If the document relates to the person requesting it, the required interest shall be deemed to be present.

*Article 4a*<sup>113</sup>  
*The application*

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<sup>113</sup> Proposed adding this new Article 4a (to replace Article 3a) after Article 4.

1. All applications for access to a document shall be **submitted** in writing in one of the languages referred to in Article 314 of the EC Treaty.
2. **The application shall state in detail the matter involved, and, where possible, the document involved, in order to enable the institution to identify the document with reasonable administrative effort. The application shall also state the form and language version in which the information should preferably be made available, together with the name and address of the applicant.**
3. If the application is too vague or incomplete, the institution shall request the applicant to make it more specific or complete. If possible, the institution shall explain why the application is too vague or incomplete and what indications are required for the application to be complied with.
4. **The institutions shall determine in their own rules of procedure to whom applications for access to documents are to be submitted and who is to take a decision regarding them.**

5. **If an institution receives an application for access to a document which is not deposited with it but with another institution or authority, the application shall be forwarded as rapidly as possible to the institution or authority which, according to its information, is in possession of that document. The applicant shall forthwith be informed thereof.**

*New Article 5*

*Processing of the application by the institution*

2. **The institution receiving an application for access to a document shall, on registering its receipt, send the applicant a notice of receipt stating the date of registration, the number assigned to the application and the consequences arising from failure to respond to the application in good time.**
3. **The institution receiving an application for access shall take a decision on it without delay, and within a maximum period of thirty days from the date of registration of the application. The applicant shall be notified of the decision by the final day of this period at the latest.**
4. **In exceptional cases, namely owing to the complexity of the application or the difficulty in collating the requested documents or where the rights of third parties are at issue and those third parties must be contacted, the time limit referred to in paragraph 2 may be extended by one month, provided that the applicant is notified of this in advance and that detailed reasons are given.**
5. **If the institution decides to refuse to release all or part of the requested document, it shall state its reasons in writing and shall inform the applicant of the remedies open to him, namely appeal to the body referred to in Article 6.**
6. **Failure to reply within the prescribed period shall entitle the applicant to appeal to the body referred to in Article 6.**
7. **The institution shall grant access to the requested documents as soon as possible, and not later than thirty days following its decision.**

*New Article 6*

*The interinstitutional body for access to documents*

1. **An interinstitutional body (hereinafter referred to as "the body") is hereby established.**
2. **The body shall comprise three members designated by the European Parliament, the Council and the Commission respectively. The institutions shall also designate their alternates.**
3. **The members of the body shall act with complete independence. In performing their duties, they shall not receive instructions from any other body.**
4. **Where an appeal is lodged with it, the appeal body may consult all documents on the spot or request them from the institution concerned. They may hear all the parties involved and request the institutions to provide further information.**

- 5. The body's budget and running costs shall be funded equally by the European Parliament, the Council and the Commission.**

*New Article 6a*  
*The appeal procedure*

- 1. The body which receives an appeal shall, on registration of the appeal, send the applicant a notice of receipt stating the date of registration, the number assigned to the application and the consequences arising from the failure to respond to the appeal in good time.**
- 2. The body shall decide on appeals against decisions of one of the three institutions on access to documents or on applications for disclosure to which an institution fails to respond**



**within the prescribed time limit. It shall take a decision on the appeal without delay, and within a maximum period of thirty days from the date of registration of the appeal. The applicant and the institution shall be notified of the decision by the final day of that period at the latest.**

- 3. The appeal must be submitted in writing within a period of thirty days which, according to the case, shall commence on the day following dispatch of the institution's decision or on the day following expiry of the period within which a decision must be taken. The appeal shall indicate the documents consultation or the forwarding of copies of which has been totally refused and shall contain a copy of the decision taken by the institution.**
- 4. In exceptional cases, namely owing to the complexity of the application or the difficulty in collating the requested documents or where the rights of third parties are at issue and these third parties must be contacted, the time limit referred to in paragraph 3 may be extended by one month, provided that the applicant is notified of this in advance and that detailed reasons are given.**
- 5. If the body decides to refuse to release all or part of the requested document, it shall state the grounds for its refusal in writing and shall inform the applicant of the remedies open to him, namely court proceedings against the appeal decision and/or a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty and the relevant provisions of the Treaty on European Union, respectively.**
- 6. The institution shall cooperate as rapidly as possible, and within thirty days of receipt of the decision at the latest, in implementing the decision taken by the appeal body.**

*Article 6b*  
*Request for an opinion*

**The body may be consulted by the institutions regarding any matter concerning access to documents in accordance with this Regulation, independently of any specific application.**

*Article 7*  
*Exercise of the right to access*

1. The applicant shall have access to documents, whether by consulting them on the spot, **receiving an explanation regarding them or receiving a copy, regard being had to the preference of the applicant.**
2. **The right to consult documents shall be free of charge. The direct costs for delivering a copy may be charged to the applicant and shall remain reasonable.**

**Where fees are requested, each institution shall draw up a list of such fees in its rules of procedure as well as provide information about the circumstances in which a fee may be requested or exemption from it granted.**

3. The applicant shall receive a copy of the requested document in the form preferred by him, where it exists in such form.
4. Documents shall be supplied in the language version indicated by the applicant, where they exist in that version.
5. An application for access to a document shall not require the institution to produce a document in the desired form or language version if such form or language version is not available.

6. If a document is already published and the applicant has easy access to it, **the institution may fulfil its obligation to grant access by informing the applicant** how to obtain the document.
4. **If parts of a document are covered by one of the grounds for exception in Article 4, the remaining part of that document shall be made available insofar as that part may be separated.**

**If the part which is released may result in a serious misconception regarding the content of the document, access to that part may also be refused, while stating the reasons.**