

**COUNCIL OF
THE EUROPEAN UNION**

GENERAL SECRETARIAT
Directorate-General F III

SN 1715/01

Brussels, 15 February 2001

Commission proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (doc. 5817/1/00 REV 1)

Working document in view of the Trialogue on 15 February

SN 1715/01

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	<p style="text-align: center;">CHAPTER I GENERAL PRINCIPLES</p> <p style="text-align: center;">Article 0</p> <p>Purpose</p> <p>In accordance with Article 1 of the Treaty on European Union and Article 255 of the Treaty, the purpose of this Regulation is:</p> <p>a) to define the principles, conditions and limits on grounds of public or private interest governing the right of access to European Parliament, Council and Commission (hereinafter the institutions) documents;</p> <p>b) to ensure the widest and easiest possible public access to documents of the institutions;</p> <p>c) to promote good practice on information management and improve the transparency and accountability of the institutions.</p> <p>All existing and future rules on access to documents of the institutions must be in conformity with this Regulation .</p> <p><i>[President Working document new 1(a), EP text Arts 1 and 2]</i></p> <p style="text-align: center;">(Art. 2.1)</p>	<p style="text-align: center;"><i>New Article 1</i> <i>Purpose and scope</i></p> <p>1. The purpose of this Regulation is</p> <p>a) to define the principles, conditions and limits on grounds of public or private interest governing the right of access to European Parliament, Council and Commission (hereinafter "the institutions") documents provided for in Article 255(1) of the EC Treaty in such a way as to ensure as wide access to documents as possible, and</p> <p>b) to establish rules enabling the easiest possible exercise of this right.</p> <p><i>Comment: The EP's amendments for Article 1 and Article 2(2) are replaced by Council Article 1(1) and recital 2 in the Preamble.</i></p> <p>2. This Regulation shall apply to all documents held by an institution, that is to say, documents drawn up by it or received from third parties and in its possession, in all areas of activity of the European Union. <i>[Former Article 2(1)]</i></p> <p>3. This Regulation shall also apply to sensitive documents as defined in Article 3(b). Those documents shall receive special procedural</p>

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<p style="text-align: center;">Article 1 General principle and beneficiaries</p> <p>Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to the widest possible access to the documents of the institutions within the meaning of this Regulation, without having to cite reasons for their interest, subject to the exceptions laid down in Article 4.</p>	<p style="text-align: center;">(Art. 2.3)</p> <p style="text-align: center;">(Art. 2.3)</p> <p style="text-align: center;">Article 1 Beneficiaries</p> <p>Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right of access to the documents of the institutions within the meaning of this Regulation, without having to cite reasons for their interest, subject to the principles and limits determined in this Regulation.</p> <p>The institutions may under the same conditions grant access to documents to any natural or legal person residing or not having its registered office in a Member State. [EP text Art 2, paras 1 and 3]</p>	<p style="text-align: center;"><i>Former Article 2(2)]</i></p> <p>4. This Regulation shall be without prejudice to rights of access to documents held by the institutions which might follow from instruments of international law to which the Community is a party or acts of the institutions implementing them</p> <p>5. [This Regulation shall be without prejudice to rules governing the transmission of documents between the institutions.] <i>Comment: EP 4(3)</i> <i>Majority of delegations: bad legislative technique - Possible recital.</i></p> <p style="text-align: center;">Article 1 - (renumbered Article 2) General principle and beneficiaries</p> <p>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, limits and conditions defined in the present Regulation.</p> <p>3. The institutions shall according to their own Rules of Procedure determine which categories of documents will be directly accessible to the public, especially those relating to their legislative activities.</p>
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Article 2
Scope

1. This Regulation shall apply to all documents held by the institutions, that is to say, documents drawn up by them or received from third parties and in their possession.

Access to documents from third parties shall be limited to those sent to the institution after the date on which this Regulation becomes applicable.

2. This Regulation shall not apply to documents already published or accessible to the public by other means. This Regulation shall not apply where specific rules on access to documents exist.

Article 2
Scope

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

2. The right of access to documents includes:

(a) direct access to:

- documents not manifestly covered by the exceptions which shall be directly available through the register or other electronic form and
- documents which shall be published in the Official Journal; and
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(b) access following a written application.

3. This Regulation shall be without prejudice to:

- a) rights of access to documents held by the institutions which might follow from instruments of international law to which the Community or Union is a party or acts of the institutions implementing them;
- b) the right of Member States to grant access to documents in accordance with their national legislation;
- c) the rights of judicial authorities, investigative bodies and Parliaments.

[President Working document Article new 1(2) and (4),
EP Text Article 4]

*Article 3
Definitions*

For the purposes of this Regulation:

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

Article 3
Definitions

For the purposes of this Regulation:

- (a) document shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) authored by an individual, department (unit, division, directorate) or institution concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility.
[document shall not mean information in the form of written messages whose content reflects personal opinion.] document shall *inter alia* include any legislative documents , preparatory documents and sensitive documents
- i "legislative document" shall mean any document created or received in the course of procedures for the adoption of acts which are legally binding in or for the Member States, by means of regulations, directives, framework decisions, or decisions, on the basis of the relevant provisions of the Treaties, [such as draft proposals for committees which assist the Commission, parliamentary committee documents and Working Group documents in the Council.]
- ii preparatory document shall mean any document for internal use authored by the General Secretariat of an institution as part of preliminary consultations and deliberations within that institution such as discussion documents, opinions of departments [or documents whose content reflect personal opinion], [such as information notes and background reports].

*Article 3
Definitions*

For the purpose of this Regulation:

- (a) "document" shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording), excluding those for internal use as part of preliminary consultations and deliberations within the institution concerned.

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<p>b) "institutions" shall mean the European Parliament, the Council and the Commission;</p> <p>c) "European Parliament" shall mean Parliament bodies (and in particular the Bureau and the Conference of Presidents), Parliamentary Committees, the political groups and departments;</p> <p>d) "Council" shall mean the various configurations and bodies of the Council (and in particular the Permanent Representatives Committee and the working parties), the departments and the committees set up by the Treaty or by the legislator to assist the Council;</p> <p>e) "Commission" shall mean the Members of the Commission as a body, the individual Members and their private offices, the Directorates-General and departments, the representations and delegations, committees set up by the Commission and committees set up to help it exercise its executive powers ;</p> <p>f) "third party" shall mean any natural or legal person, or any entity outside the institution, including the Member States, other Community and non-Community institutions and bodies and non-member countries.</p>	<p>iii [sensitive document shall mean any document pertaining to defence and military matters, classified as Top Secret , Secret [or Confidential] falling within the scope of the third indent of Article 4(1)(a).</p>	<p>(b) "sensitive documents" shall mean documents classified as "Top Secret", "Secret" or "Confidential", in accordance with the rules of the institution concerned.</p> <p>For the purpose of this regulation, sensitive documents transferred from one institution to another shall also be considered as sensitive documents by the other institution.</p> <p>(c) "third party" shall mean any natural or legal person, or any entity outside the institution concerned, including the Member States, other Community or non-Community institutions and bodies and non-member countries.</p>
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A list of the committees referred to in points (d) and (e) of the first paragraph shall be drawn up as part of the rules giving effect to this Regulation, as provided for in Article 10.

(b) agency shall mean any existing or future body created by any or all of the institutions on the basis of their Community or Union competences.[The existing agencies are those referred to in Annex A].

[EP[EP text, Article 5(a)[EP text, Article 5(a),[EP text, Article 5(a), (b) Council rules of procedure, (c) Presidency Working document 3(b)]

(Art. 8)

Article 3A
Applications

1. Applications for access to a document shall be made in writing in one of the languages referred to in Article 3 14 of the EC Treaty and in a sufficiently precise manner to enable the institution to identify the document. The applicant is not obliged to state reasons for his application.
2. If an application is not sufficiently precise the institution shall ask the applicant to specify the application and shall assist the applicant in doing so, e.g. by providing information on the use of the public registers of documents.
3. In the event of general and repetitive applications or applications relating to very large documents or a very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution.

Article 4

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<i>Exceptions</i>	Article 4 Exceptions	<i>Article 4 Exceptions</i>
<p>The institutions shall refuse access to documents where disclosure could significantly undermine the protection of:</p> <p>a) the public interest and in particular:</p> <ul style="list-style-type: none"> public security, defence and international relations, relations between and/or with the Member States or Community and non-Community institutions, financial or economic interests, monetary stability, the stability of the Community's legal order, court proceedings, inspections, investigations and audits, infringement proceedings, including the preparatory stages thereof, the effective functioning of the institutions; <p>b) privacy and the individual, in particular:</p> <ul style="list-style-type: none"> personnel files, information, opinions and assessments given in confidence with a view to recruitments or appointments, an individual's personal details or documents containing information such as medical secrets which, if disclosed, might constitute an infringement of privacy or facilitate such an infringement; <p>c) commercial and industrial secrecy or the economic interests of a specific natural or legal</p>	<p>1. Public access to documents may be limited on the following grounds:</p> <p>(a) access may be denied on grounds of public interest where disclosure could significantly undermine</p> <ul style="list-style-type: none"> public security, financial policy or monetary stability of the Community or of a Member State, defence and military matters, vital interests relating to the European Union's international relations, [court proceedings,] [inspections, investigations and audits.] <p>(b) access shall be denied where disclosure would be contrary to the protection, under the law, of the right to privacy of the individual, in particular as protected by Community legislation regarding the protection of personal data [and by Annex B for Union activities].</p>	<p>1. The institutions shall refuse access to documents where disclosure would undermine the protection of:</p> <p>(a) [the public interest as regards:]</p> <ul style="list-style-type: none"> public security; defence and military matters; international relations; [relations between a Member State and an institution of the Community], or between the institutions of the Community and non-Community institutions; the financial, monetary or economic policy of the Community or a Member State; <p>(b) privacy and the integrity of the individual, in particular as protected by Community legislation regarding the protection of personal data;</p> <p>2. The institutions shall refuse access to a document,</p>

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<p>person and in particular:</p> <p>business and commercial secrets, intellectual and industrial property, industrial, financial, banking and commercial information, including information relating to business relations or contracts, information on costs and tenders in connection with award procedures;</p> <p>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.</p>	<p>(c) access may also be denied on grounds of commercial secrecy [where this outweighs the public and private interest in disclosure].</p> <p>[2. Access to a preparatory document which relates to a matter where the decision has not yet been taken by an institution may be denied if the adverse</p>	<p>where on balance against a particular [specific] public interest in disclosure, the disclosure would undermine the protection of:</p> <p>economic interests of a natural or legal person, <u>including intellectual property</u>, concerning in particular:</p> <ul style="list-style-type: none"> — business and commercial secrets; — intellectual and industrial property; — information on costs and tenders in connection with award procedures before these procedures are completed; <p>court proceedings, infringement proceedings and legal advice; efficiency of inspections, investigations and audits; infringement proceedings, including the preparatory stages thereof; [the ability of the institutions to seek the advice of their legal services]</p> <p>3. Access to a document which relates to a matter where the decision has not been taken by the institutions may be denied if its disclosure could seriously undermine the institution's decision-making process, unless it is clearly in the public interest to disclose the document.</p> <p>4. A Member State may request the institution not to disclose a document originating from that Member State without its prior agreement.</p> <p>5. Sensitive documents originating from a third party shall be released only with its consent.</p> <p>6. As regards third party documents not covered by paragraphs 4 and 5 the institution shall consult with the third party with a view to assess whether an exception in paragraphs 1 and 2 is applicable, unless it is clear that the document shall or shall not be handed out.</p>
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	<p>impact of its disclosure on that institution's decision-making process outweighs the public interest in the disclosure of the document.]</p> <p>3. [When considering the public interest in the disclosure of the document, the institution shall also take account of the interest raised by a petitioner, complainant or other beneficiary having a right, interest or obligation in a matter.]</p> <p>4. The exceptions shall only apply for the period during which protection is justified on the basis of the content. After a maximum period of 30 years the exceptions shall cease to apply except for those referred to in paragraph 1(b) [and in relation to sensitive documents] which may, if necessary, continue for a further 20 years.</p> <p>[EP text, Article 6(4) and Article 7 and Pre-Working document, Article 4(2)]</p> <p style="text-align: center;">CHAPTER II THIRD PARTIES</p> <p style="text-align: center;">Article 5 Documents of Member States</p>	<p style="text-align: center;">(Art. 4.3)</p> <p>referred to in paragraph 1(b) [and in relation to sensitive documents] which may, if necessary, continue for a further 20 years.</p> <p>[EP text, Article 6(4) and Article 7 and Pre-Working document, Article 4(2)]</p>
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	<p>and Community or Union institutions and bodies</p> <ol style="list-style-type: none"> 1. Any Member State or institution as defined in Article 7 of the Treaty or Community or Union body which transmits a document to an institution must indicate whether it considers that any of the exceptions in Article 4 apply and, if so, to which parts of the document. [This request shall be deemed to be well-founded.] 2. Public access may be granted by the recipient institution if it considers that the exceptions [manifestly] do not apply. Prior to granting access, the institution shall take a decision providing for the disclosure of the document. 3. In the decisions referred to in the second paragraph above the institution shall state the date on which the decision shall take effect, which shall not be less than 21 days from the date of the decision, and the institution shall immediately send the decision to the party concerned. <p>[EP text, Article 10 and Presidency Working document Article 4(3) and (4)]</p> <p style="text-align: center;">Article 6</p> <p style="text-align: center;">Documents of non-community institutions, non-member countries and natural and other legal persons</p> <ol style="list-style-type: none"> 1. Any non-community institution, non-member country, or natural or other legal person should indicate whether it considers that any of the exceptions in Article 4 apply and if so, to which parts of the document. 2. Public access may be granted by the institution to a document of a non-community institution or a non-member country if the institution considers that the exceptions do not apply [unless an international agreement or other legal requirement precludes the 	<p>(Art. 4.4, 4.5)</p> <p>[EP text, Article 10 and Presidency Working document]</p>
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disclosure of the document]. Prior to granting access, the institution shall take a decision providing for the disclosure of the document. The institution shall indicate the remedies available.

Public access may be granted by the institution to

3. documents of natural or other legal persons if the institution considers that the exceptions do not apply. If the natural or legal person indicates that it considers that Article 4(1)(b) or (c) apply, prior to granting access, the institution shall take a decision providing for the disclosure of the document.
4. In the decisions referred to in the second and third paragraphs above the institution shall state the date on which the decision shall take effect, which shall not be less than 21 days from the date of the decision, and the institution shall immediately send the decision to the party concerned.

[EPEP text, Article 10 and Presidency Working document, Article 4(3) and (4)]

Article 7

Documents in the Member States

1. Each institution shall, when transmitting documents to one or more Member States, inform the Member States, if the institution considers that one of the exceptions in Article 4 applies.
2. Where a Member State receives an application for a document of an institution which the institution considers to be within the scope of one of the exceptions in Article 4, the Member State shall immediately inform the institution and request the institution to confirm whether the exception in Article 4 still applies.
3. [Except in the case of sensitive documents,] the Member State shall decide in accordance with its

(Art. 3A)

<p style="text-align: center;"><i>Article 5</i> <i>Processing of initial applications</i></p> <p>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.</p> <p>In the event of repetitive applications and/or applications relating to very large documents, the institution concerned shall confer with the applicant informally, with a view to finding a fair solution.</p> <p>2. Within one month of registration of the application, the institution shall inform the applicant, in a written and reasoned reply, of the outcome of the application.</p> <p>3. Where the institution gives a negative reply to the applicant, it shall inform him that, within one month of</p>	<p>national legislation whether the document or parts thereof can be disclosed.</p> <p>4. [In the case of sensitive documents, where the institution confirms that the exception in Article 4 still applies, the Member State may only transfer the document if, according to its national rules, the Member State can assure the same level of protection for the sensitive documents.]</p> <p>[EP text, Article 11]</p> <p style="text-align: center;">CHAPTER III DOCUMENTS AVAILABLE ON APPLICATION</p> <p style="text-align: center;">Article 8 Application</p> <p>1. Applications for access to a document shall be made in writing in one of the languages referred to in Article 314 of the EC Treaty and in a sufficiently precise manner to enable the institution to identify the document. The applicant is not obliged to state reasons for his application. In writing also comprises applications in electronic form such as fax or e-mail.</p> <p>2. If an application is not sufficiently precise the institution shall ask the applicant to specify the application and shall assist the applicant in doing so, e.g. by providing information on the use of the public registers of documents.</p> <p>3. If only parts of the requested document are covered by any of the exceptions in Article 4, the remaining parts of the document shall be released.</p>	<p style="text-align: center;"><i>Article 5</i> <i>Processing of initial applications</i></p> <p>1. Applications for access to documents shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. In any event, within one month from 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 and of his right to make a confirmatory application in accordance with paragraph 2.</p>
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<p>receiving the reply, he is entitled to make a confirmatory application asking the institution to reconsider its position, failing which he shall be deemed to have withdrawn the original application.</p> <p>4. In exceptional cases, the one-month 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.</p> <p>Failure to reply within the prescribed time-limit shall be treated as a negative response.</p> <p style="text-align: center;"><i>Article 6</i> <i>Processing of confirmatory applications; remedies</i></p> <p>1. Where the applicant submits a confirmatory application, the institution shall reply to him in writing within one month of the registration of the application. If the institution decides to maintain its refusal to grant access to the document requested, it shall state the grounds for its refusal and inform the applicant of the remedies open to him, namely court proceedings and a complaint to the Ombudsman, under the conditions</p>	<p>4. The staff of the institutions shall as far as possible help and inform the citizens how and where applications for access to documents can be made.</p> <p>[Presidency Working Document, Article 3A, paras 1 and 2, Article 7, para 4 and EP text Article 13, para 7]</p> <p style="text-align: center;">Article 9 Processing of initial applications</p> <p>1. Applications for access to documents shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. In any event, within [three weeks] from registration of the application, the institution shall either grant access to all the documents applied for [and send the documents within that period] or, in a written reply, inform the applicant of the reasons for the total or partial refusal and of his right to make a confirmatory application in accordance with paragraph 2.</p> <p>[Initial applications for sensitive documents shall be handled only by those persons who have a right to acquaint themselves with those documents according to the internal rules of the institution concerned.]</p> <p>2. In the event of a total or partial refusal, the</p>	<p>2. In the event of a total or partial refusal, the applicant may, within one month of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.</p> <p>3. 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 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.</p> <p>4. Failure to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.</p> <p>[5. When a Member State's authority receives an application for access to a document of an institution which has not yet been released by the institution concerned, it shall forward the application promptly to the institution for a decision to be taken. When an institution receives an application for access to a document of another institution, it shall forward the application to this other institution.]¹⁾</p> <p>-----</p> <p>¹⁾ The issue of applicability in Member States is still to be discussed.</p> <p style="text-align: center;"><i>Article 6</i> <i>Processing of confirmatory applications</i></p> <p>1. A confirmatory application shall be handled promptly. In any event, within one month from registration of such an application, the institution</p>
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<p>laid down in Articles 230 and 195 of the EC Treaty, respectively.</p> <p>2. In exceptional cases, the time-limit provided for in paragraph 1 may be extended by one month, provided that the applicant is notified in advance and that detailed reasons are given.</p> <p>Failure to reply within the prescribed time-limit shall be treated as a positive decision.</p>	<p>applicant may, within [three weeks] of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.</p> <p>3. 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 [three week] time-limit provided for in paragraph 1 may be extended by [three weeks], provided that the applicant is notified in advance and that detailed reasons are given.</p> <p>4. Failure to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.</p> <p>5. If the document cannot be immediately disclosed, the institution shall, if appropriate, inform the applicant of the date on which the document can be disclosed.</p> <p>[Presidency Working document, Article 5, paras 1 to 4 and EP text, Article 13(5)]</p> <p style="text-align: center;">Article 10 Processing of confirmatory applications</p> <p>1. A confirmatory application shall be handled promptly. In any event, within [three weeks] from registration of such an application, the institution shall either grant access to the documents requested or, in a written reply, state the reasons for total or partial refusal. Should the institution deny access</p>	<p>shall either grant access to the documents requested or, in a written reply, state the reasons for total or partial refusal. Should the institution deny access in total or in part, it shall inform the applicant of the remedies open to him, namely instituting court proceedings against the institution and/or making a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively.</p> <p>2. 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 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.</p> <p>3. Failure by the institution to reply within the prescribed time-limit shall be considered as a negative reply and entitle the applicant to refer the matter to the Ombudsman and/or to the Court of Justice, under the relevant provisions of the Treaties.</p> <p style="text-align: center;"><i>New Article 6A</i> <i>Special procedural treatment for sensitive documents</i></p> <p>Applications for access to sensitive documents within the procedures foreseen at Articles 5 and 6</p>
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<p style="text-align: center;"><i>Article 7</i> <i>Exercise of the right to access</i></p> <p>1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy.</p> <p>The cost of his doing so may be charged to the applicant.</p> <p>2. Documents shall be supplied in an existing language version, regard being had to the preference expressed by the applicant.</p> <p>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.</p> <p style="text-align: center;"><i>Article 8</i> <i>Reproduction for commercial purposes or other forms of</i></p>	<p>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.</p> <p>[Confirmatory applications for sensitive documents shall be handled only by those persons who have a right to acquaint themselves with those documents according to the internal rules of the institution concerned.]</p> <p>2. 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 time-limit provided for in paragraph 1 may be extended by [three weeks], provided that the applicant is notified in advance and that detailed reasons are given.</p> <p>3. Failure by the institution to reply within the prescribed time-limit shall be considered as a positive decision.</p> <p>[Presidency Working document, Article 6, and Commission proposal, Article 6(2), para 2]</p>	<p>shall be handled only by those persons who have a right to acquaint themselves with those documents, in accordance with the rules of the institution concerned.</p> <p style="text-align: center;"><i>Article 7</i> <i>Exercise of the right to access</i></p> <p>1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, according to his preference.</p> <p>The cost of his doing so may be charged to the applicant. The charge has to be limited to an amount which will not exceed the real cost of production and sending of the copies.</p> <p>2. If a document has already been released by the institution concerned and is easily accessible to the applicant, the institution may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document.</p> <p>3. Documents shall be supplied [in an existing version and form] as requested by the applicant if they are already available in that form, including electronically or in an alternative format, such as Braille, large print or tape, and regard being had to the preference expressed by the applicant.</p> <p>4. If only parts of the requested document are covered by any of the exceptions in Article 4, the remaining parts of the document shall be released.</p>
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economic exploitation

An applicant who has obtained a document may not reproduce it for commercial purposes or exploit it for any other economic purposes without the prior authorisation of the right-holder.

Article 9
Information and registers

Each institution shall take the requisite measures to inform the public of the rights they enjoy as a result of this Regulation. Furthermore, to make it easier for citizens to exercise their rights arising from this Regulation, each institution shall provide access to a register of documents.

Article 11

Access following an application

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

In the case of very substantial documents or a very large number of documents the cost of his doing so may be charged to the applicant. The charge has to be limited to an amount which will not exceed the real cost of production [and sending] of the copies. Consultation on the spot and direct access through the register or in other electronic form shall be free of charge.

2. [If a document has already been released by the institution concerned and is easily accessible to the applicant, the institution may inform the applicant how to obtain the requested document.]
3. Documents shall be supplied [in an existing language version and format] as requested by the applicant if they are already available in that form, including electronically or in an alternative format, such as Braille, large print or tape, and regard being had to the preference expressed by the applicant.

[EP[EP text, Article 15 and Presidency Working document Article 7]

*Article 8****Reproduction for commercial purposes or other forms of economic exploitation***

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.

Article 9
Information

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

Article 9A
Registers

1. To make the citizens' rights arising from this Regulation effective each institution shall provide public access to a register of documents.

	<p>(Art. 17)</p> <p>CHAPTER IV DIRECTLY ACCESSIBLE DOCUMENTS</p> <p>Article 12 Documents to be published in the Official Journal</p> <p>In addition to the documents required to be published by Article 254 of the Treaty and Article 163 of the Euratom Treaty, the documents referred to in Annex C shall be published in the Official Journal including, where appropriate, the date of entry into force.</p> <p>[EP text, Article 12]</p> <p>(Art. 15)</p> <p>Article 13 Registers</p> <p>1. Each institution shall provide public access to a register of documents. Access shall be granted in electronic form. Documents shall be introduced onto the register without delay.</p> <p>2. For each document the register shall contain a</p>	<p>2. For each document the register shall contain a reference number, the subject matter and/or a short description of the content of the document and the date the document was received or drawn up and entered into the register. Reference shall not be made if disclosure of the reference could undermine the protection of information provided for in Article 4.</p> <p>3. The public register shall not include any references to sensitive documents.</p> <p><i>Comment: This provision specifies referencies which should be included in the register. The corresponding provisions in the EP amendments are found in Article 18(1) subparagraph 1 and 18(2).</i></p>
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reference number, the subject matter and/or a short description of the content of the document and the date the document was received or drawn up and entered into the register. Where all or part of a document is covered by an exception in Article 4, the register shall contain a reference to the exception.

Article 9B

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

Comment: Measures to develop and support the access system are suggested in several Articles in the EP amendments (Articles 9[b], 12, 18(1) subparagraph 2 and 18(4) and Article 19).

3. Legislative documents not manifestly covered by one of the exceptions in Article 4 shall, in addition to the references above, be made directly accessible through the register. [Other categories of documents not manifestly covered by the exceptions shall progressively be made accessible through the register.]
4. After the adoption of a decision referred to in Article 4(2) or the final adoption of the act concerned, the institution shall make available to the public any [preparatory] documents relating to this act which were drawn up before this decision, unless any of the exceptions in Article 4 apply.
5. The institutions must immediately take the measures

(Art. 9)

necessary to establish a register which must be operational at the latest one year from the entry into force of the Regulation.

[EP text, Article 9, Council documents] [EP text, Article 18 and Presidency Working document, Article 9, Council draft decision on direct access to documents]

CHAPTER V COMPLEMENTARY MEASURES

Article 14 Parliamentary scrutiny

Based on the mechanisms on the Member States for the transmission and handling of confidential information between the governments and national parliaments, and to the extent necessary to ensure the openness of the decision-making process, the institutions shall agree mechanisms for the transmission of documents which are excluded from public access by the Commission and Council to the European Parliament.

[EP text, Article 15(3)]

Article 15 Information

1. Each institution shall be responsible for informing the public of the rights they enjoy as a result of this Regulation and for making this information easily

(Art. 8)

	<p>available:</p> <ul style="list-style-type: none"> (a) the internal rules; (b) the structure of the institution including details of any departments, committees, and formal working groups in all areas of the Union's activities; (c) the department(s) to whom written applications for documents should be addressed; (d) a code of conduct on transparency for officials. <p>2. The Member States shall cooperate with the institutions in the provision of information to the citizens and shall, through public authorities and facilities as far as possible, grant access to <i>inter alia</i> the registers of the institutions and the Official Journal. [EP text, Article 17 and Article 11(3)]</p> <p style="text-align: center;">Article 16 Appointment and tasks of the Information Officer</p> <p>Each institution shall appoint one Information Officer [of appropriate rank] with the necessary staff and with the task of ensuring the correct application of the exceptions in Article 4, in particular:</p> <ul style="list-style-type: none"> (a) responding to applications; and (b) supervising the register of documents. <p>[EP text, Article 19]</p> <p style="text-align: center;">Article 17 Reproduction for commercial purposes or other forms of economic exploitation</p> <p>1. This Regulation does not interfere with rights, existing by virtue of intellectual or industrial property, that protect information contained in</p>	
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2. Within a period of [three] years the Commission shall publish a report on the implementation of this Regulation by the institutions and shall make recommendations, if appropriate.

[EP text, Article 21]

CHAPTER VI
TRANSITIONAL PROVISIONS

Article 20
Implementing provisions

1. In accordance with Article 255(3), Article 199(2) and Article 207(3) of the Treaty, the institutions shall adopt in their rules of procedure provisions implementing these Regulations. Those provisions shall take effect on at the latest [six months] after the entry into force of this Regulation.
2. In order to provide the basis for the adoption of the implementing provisions referred to in the paragraph above, the institutions shall agree, on the basis of proposals presented by an inter-institutional committee, on the following:
- (a) guidelines for the applications of the exceptions; [for the documents to be included in the register;] and for the transmission of documents between the institutions; and procedures for the resolution of conflicts between the institutions and procedures relating to the provision of information to a select committee of the European Parliament.
 - (b) general measures on the production, storage and dissemination of documents (through a common interface), including measures on quality of drafting of legislation, archiving of documents and the format and presentation of

the Official Journal.

3. The agreements referred to in paragraph 2 above will be adopted by the Council acting by a majority in accordance with Article 205 of the Treaty and by the European Parliament acting by a majority of the votes cast. The agreements may be modified at the request of one of the parties.

[EP text, Article 9 and Article 22]

Article 21
Agencies

Within a period of [six months] from the date of entry into force of this Regulation the agencies shall adopt implementing rules which give effect to the other provisions in this Regulation.

[EP text, Article 5(b)]

Article 22
Europol

In its capacity as the institution responsible for Europol, the Council shall examine within a period of one year of the entry into force of this Regulation, on the basis of a proposal presented by the Commission or an initiative presented by a Member State, the necessary amendments to bring the Council Act of 3 November 1998 adopting rules on the confidentiality of Europol information^{1 2} *into line with the principles of this Regulation.*

[EP text, Article 23]

CHAPTER VI
FINAL PROVISIONS

Article 23
Repeal and modification

<p style="text-align: center;"><i>Article 10</i> <i>Effect</i></p> <p>Each institution shall adopt in its rules of procedure the provisions required to give effect to this Regulation. Those provisions shall take effect on [three months after the adoption of this Regulation].</p> <p style="text-align: center;"><i>Article 11</i> <i>Entry into force</i></p> <p>This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Communities. It shall be applicable from & [three months from the date of adoption of this Regulation].</p> <p>This Regulation shall be binding in its entirety and directly applicable in all Member States.</p>	<p>1. From the date of the entry into force of the implementing provisions referred to in Article 22 the following shall be repealed:</p> <p>(a) Council Decision 93/731/EC of 20 December 1993 on public access to Council documents as last amended by Council Decision 2000/527/EC of 14 August 2000,</p> <p>(b) Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents,</p> <p>(c) European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents,</p> <p>(d) Decision of the Executive Committee of 14 December 1993 concerning the confidentiality of certain documents [SCH/Com-ex(93) 22 rev]³,</p> <p>(e) Decision of the Executive Committee of 23 June 1998 concerning the confidentiality of certain documents [SCH/Com-ex(98) 17]⁴.</p> <p>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 with this Regulation and proposed the necessary modifications to Regulation 354/83.</p> <p>3. Within six months of entry into force of this Regulation the Commission shall examine the conformity of existing rules on access to documents with this Regulation and shall if</p>	<p style="text-align: center;"><i>Article 10</i> <i>Effect</i></p> <p>Each institution shall adopt in its Rules of Procedure the provisions required to give effect to this Regulation. Those provisions shall take effect on ... (three months after the adoption of this Regulation).</p> <p style="text-align: center;"><i>Article 11</i> <i>Entry into force</i></p> <p>This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Communities. It shall be applicable from ... (three months from the date of adoption of this Regulation).</p> <p>This Regulation shall be binding in its entirety and directly applicable in all Member States.</p> <p style="text-align: center;"><i>For the European Parliament</i> <i>For the Council</i> <i>The President</i> <i>The President</i></p> <p>Joint statement for the minutes</p> <p>[The European Parliament, the Council and the</p>
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	<p>necessary propose the repeal or modification of the existing rules.</p> <p>[EP text, Article 24]</p> <p style="text-align: center;">Article 24 Entry into force</p> <p>This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Communities, [but shall not be fully applicable until the entry into force of the implementing provisions in Article 20].</p> <p>This Regulation shall be binding in its entirety and directly applicable in all Member States.</p> <p>Done at & &...</p>	<p>Commission invite the other institutions and bodies of the European Union to adopt rules in line with the principles and conditions laid down in this Regulation ...]</p> <p><i>Comment: Article 255 covers the institutions. This declaration relates to recital 13 of the Preamble, Article 5 b and Article 23 of the text proposed by the European Parliament.</i></p>
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COMMISSION

EUROPEAN PARLIAMENT

COUNCIL

	For the European Parliament The President	For the Council The President

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OJ C 26, 30.1.1999, p. 10.

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OJ L 239, 22.9.2000, p. 129.

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OJ L 239, 22.9.2000, p. 137.