

1. Public access to documents of the European Parliament, the Council and the Commission *I**

A5-0318/2000 Rapporteur: Michael Cashman

*Committee on Citizens' Freedoms and Rights, Justice and Home Affairs
PE 285.961*

Proposal for a European Parliament and Council regulation regarding public access to European Parliament, Council and Commission documents (COM(2000) 30 - C5-0057/2000 - 2000/0032(COD))

The proposal was amended as follows¹:

<i>Text proposed by the Commission¹</i>	<i>Amendments by Parliament</i>
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(Amendment 1)

Title of Regulation

Proposal for REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL regarding public access to European Parliament, Council and Commission documents

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL regarding public access to European Parliament, Council and Commission documents and improving transparency in their working methods.

(Amendment 2)

Recital -1 (new)

(-1) Trust and confidence in the European Union and its institutions can only be ensured if an open and democratic political debate and decision-making process takes place at all levels.

(Amendment 3)

Recital 1a (new)

¹ The matter was then referred back to committee pursuant to Rule 69(2).

(Amendment 4)
Recital 1b (new)

(1a) *The Charter of Fundamental Rights of the European Union adopted by the European institutions stresses the same concept of openness in Article 41 (right to good administration) and Article 42 (right of access to documents).*

(Amendment 5)
Recital 2

(2) *Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable vis-à-vis the citizen in a democratic system.*

(1b) *Strengthening the protection of the rights and interests of nationals of the Member States of the Union is listed in Article 2 of the Treaty on European Union as an objective of the Union; Article 2 of that Treaty also stipulates that the objectives of the Union shall be achieved while respecting the subsidiarity principle.*

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

vital part in protecting against the arbitrary use of and the abuse of power and against corruption and fraud.

*(Amendment 6)
Recital 2a (new)*

(2a) Respecting the democratic principle foreseen in Article 6 of the Treaty on European Union, in exceptional cases where documents cannot be made public, Parliamentary scrutiny must be granted according to an interinstitutional agreement.

*(Amendment 7)
Recital 2b (new)*

(2b) Openness and transparency are also means to overcoming any problems that may be caused by cultural and linguistic differences among the Member States

*(Amendment 8)
Recital 3*

(3) The conclusions of the European Councils held at Birmingham, Edinburgh and Copenhagen stressed the need to introduce greater transparency into the work of the Union institutions. Following these conclusions, the institutions launched a series of initiatives aimed at improving the transparency of the decision-making process by targeting information and communication measures more effectively and adopting rules on public access to documents.

(3) This Regulation provides a new legal basis and consolidates the initiatives that the institutions have already taken with a view to improving the transparency of the decision-making process by targeting information and communication measures more effectively and adopting rules on public access to documents. On the same basis, this Regulation is the legal framework for existing and future interinstitutional agreements in relation to methods of drafting laws, content and format of the Official Journal, managing and storing documents with a view to

granting access, and guidelines on the implementing rules on access to documents.

(Amendment 9)
Recital 3a (new)

(3a) The implementing rules on public access to documents should be drafted as clearly as possible.

(Amendment 10)
Recital 4

(4) *The purpose of this Regulation is to widen access to documents as far as possible, in line with the principle of openness. It puts into practice the right of access to documents and lays down the general principles and limits on such access in accordance with Article 255(2) of the EC Treaty.*

(4) *In recognition of the need for further progress in the Union towards greater transparency, the Treaty of Amsterdam introduced into the Treaty Article 255 on the right of access to documents. Consistent with the principle of openness in Article 1 of the Treaty on European Union, the purpose of this Regulation which implements Article 255 of the Treaty, is to give the fullest possible effect to the right of access to documents and thereby to increase openness and transparency in the institutions. It defines the scope of the right of access to documents and lays down the general principles and limits on such access in accordance with Article 255(2) of the Treaty.*

(Amendment 11)
Recital 6a (new)

(6a) Where bodies and agencies are created by the European Parliament, the Council or the Commission and they are under the responsibility of the institutions, those bodies and agencies should, as regards access to documents, apply the principles laid down in this Regulation. As a matter of good administration, the other institutions and bodies may adopt

internal rules on public access to documents which take account of the principles and limits in this Regulation.

(Amendment 12)
Recital 7

(7) In order to bring about greater openness in the work of the institutions and in line with current national legislation in most of the Member States, access to documents ***should*** be extended to include all documents held by the European Parliament, the Council and the Commission.

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(Amendment 13)
Recital 7a (new)

(7a) In accordance with Article 207 of the Treaty, greater access to documents should be granted at least in those cases where the institutions can be regarded as acting in their legislative capacity. Therefore, in principle, all documents adopted in the course of a legislative procedure must be made public.

(Amendment 14)
Recital 8

(8) The principles laid down by this Regulation are to be without prejudice to the specific rules applicable to access to documents, ***in particular those directly concerning persons with a specific interest.***

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

Annex to this Regulation.

(Amendment 15)
Recital 9

- (9) *The public interest and certain individual interests should be protected by way of a system of exceptions. Examples of these interests should be given in each case so that the system may be as transparent as possible.* The institutions should *also* be entitled to protect *their internal documents* which *express* individual opinions or *reflect* free and frank discussions and provision of advice as part of internal consultations and deliberations.

- (9) *In principle, all the documents of the institutions are accessible. However, certain public and private interests may be protected by way of a system of exceptions. The institutions should be entitled to protect informal information which serves the provision of personal opinion or the free exchange of ideas within the institutions. When decisions are taken on the disclosure of a document the need to protect some of the interests protected by the exceptions must be weighed against the interest of promoting transparency and public discussion.*

(Amendment 16)
Recital 10

- (10) In order to ensure that the right of access is fully observed, *the present* two-stage administrative procedure, with the possibility of court proceedings or complaints to the Ombudsman, should be *maintained, whilst the principle should be introduced whereby* at the confirmatory stage no response *is treated as a positive response.*

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

(Amendment 17)
Recital 10a (new)

- (10a) *Each institution may at the time a document is produced or received and should at the latest when it is listed in the register examine by reference to specific exceptions laid down in this Regulation whether access to that document may be limited.*

(Amendment 18)
Recital 11

(11) Each institution should **take** the measures necessary to inform **the** public about the new provisions in force; **furthermore**, to make it easier for citizens to exercise their rights arising from this Regulation, each institution should **provide access to** a register of documents.

(Amendment 19)
Recital 11a (new)

(11) Each institution should **be responsible for taking** measures to inform the public about the new provisions in force. **Furthermore**, to make it easier for citizens to exercise their rights arising from this Regulation, each institution should **establish** a register of documents. **If necessary, the institutions must be provided with adequate resources to enable them to implement the Regulation properly.**

(11a) Each institution should encourage and educate the staff concerned to help and assist citizens trying to exercise their rights arising from this Regulation and should establish contact points. Each institution should reorganise and simplify the internal procedures and methods for managing the work flow of documents.

(Amendment 20)
Recital 12

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

(12) **In accordance with the principle of subsidiarity in Article 5 of the Treaty** this Regulation **does not** amend **or harmonise** existing national legislation on access to documents. **In accordance with** the principle of loyalty **laid down in Article 10 of the Treaty** which governs relations between the Community institutions and the Member States, **the institutions shall take account of the opinion of the author before taking the final decision on the disclosure of documents. At the same time the institutions concerned should respect the right of Member States**

to grant access in accordance with their national legislation.

(Amendment 21)
Recital 12a (new)

(12a) *The protection which citizens of the Union enjoy pursuant to international agreements should not be limited by the Union.*

(Amendment 22)
Recital 13

(13) In accordance with Article 255(3) of the EC Treaty, each institution lays down specific provisions regarding access to its documents in its rules of procedure. ***Failing such provisions, this Regulation cannot be applicable.*** This Regulation and the provisions giving effect to it will replace Council Decision 93/731/EC of 20 December 1993 on public access to Council documents⁽¹⁾, Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents and European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents.

(13) In accordance with Article 255(3) of the EC Treaty, each institution lays down specific provisions regarding access to its documents in its rules of procedure. ***Those provisions should supplement this Regulation and should not conflict with its content. This applies also to the conditions under which the public are to have access to Council documents, to be elaborated in the Council's Rules of Procedure pursuant to Article 207(3) of the Treaty, since Article 255(1) of the Treaty is to be seen as the general and overriding provision.***

(13a) This Regulation and the provisions giving effect to it will replace Council Decision 93/731/EC of 20 December 1993 on public access to Council documents ***as amended by the Council Decision 2000/527/EC of 14 August 2000***⁽¹⁾, Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents and European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents ***which should therefore be repealed. The rules relating to the confidentiality of Schengen documents and to the***

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

(Amendment 23)
Before Article 1, heading (new)

(Amendment 24)
Article -1 (new)

(Amendment 25)

archives should also be repealed.

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

CHAPTER I

GENERAL PRINCIPLES AND SCOPE

Article 1

Purpose

- 1. The purpose of this Regulation, which implements Article 255 of the Treaty, is to give effect to the constitutional principle laid down in Article 1 of the Treaty on European Union according to which decisions in the Union have to be taken as openly as possible and as closely as possible to the citizen.**
- 2. Pursuant to Article 255 (2) of the Treaty this Regulation defines the principles and conditions on which this right of access to documents can be limited on grounds of public or private interest.**
- 3. The purpose of this Regulation is also to promote good practice on information management in the institutions covered by this Regulation and to give natural and legal persons the opportunity to monitor and influence the functioning of the institutions.**

Article 1

General principle and beneficiaries

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, **shall have the right to the widest possible** access to the documents of the institutions within the meaning of this Regulation, without having to cite reasons for their interest, subject to the **exceptions laid down in Article 4.**

Beneficiaries

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

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

The institutions may under the same conditions grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.

(Amendment 26)

Article 2

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.**

It shall not apply where specific rules on access to documents exist.

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

2. **In case of conflict, this Regulation takes precedence over existing Regulations adopted on the basis of the European Union or Community Treaties, allowing a less favourable treatment for the citizens with regard to access and limits to access to documents.**

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

(Amendments 27 and 73)

Article 2a (new)

Article 2a

General Principles

1. The right of access to documents of the institutions includes access to published documents and access to documents

available on the register and documents available on written request.

2. This Regulation does not affect the right of Member States to grant access to documents in accordance with their national legislation.

3. This Regulation does not authorise the withholding of documents from the European Parliament.

4. This Regulation does not deprive citizens of the Union of rights concerning access to documents acquired under instruments of international law.

5. This Regulation is without prejudice to the rights of judicial authorities, investigative bodies and Parliaments.

(Amendment 28)
Article 3

For the purposes of this Regulation:

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

(b) institutions shall mean the European Parliament, the Council and the Commission;

For the purposes of this Regulation:

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

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

(b) institutions shall mean the European Parliament, the Council and the Commission **as well as**

- **their internal and subsidiary bodies (for example European Parliament Committees, Council Committees, Council**

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

(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;*

(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;*

(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.*

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.

(Amendment 29)
Article 3a (new)

Working Groups and Commission Directorates-General);

- *agencies created by the institutions and accountable to the institutions, as listed in Annex II.*

Deleted.

Deleted.

Deleted.

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

Article 3a

Principles on Access

1. All documents are accessible unless the limits on access set out in Article 4 of

this Regulation apply.

2. If an institution wishes to limit access to a document it may classify the document as soon as the document is produced or received and shall classify it at the latest when it is listed in the register referred to in Article 9. A later classification may not limit the access to a document except in exceptional circumstances.

The classification shall include a reference to the exception in Article 4 concerned.

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

3. When an application for disclosure is made, the institution shall assess whether the exception in Article 4 still applies. In any event all classifications not limited in time shall be reviewed at regular intervals.

4. After the expiry of a period of 30 years, all documents shall be accessible to the public except the following documents or parts of documents:

- files relating to staff of the institutions or records containing information on the private or professional life of individual persons or otherwise covered by the rules on the protection of personal data*
- documents which have been graded confidential or higher and which have not been declassified*
- contracts submitted to or concluded by the Euratom Supply Agency pursuant to Chapter VI of the Treaty establishing the European Atomic Energy Community.*

(Amendment 30)
Article 4

The institutions shall refuse access to documents where disclosure could significantly undermine the protection of:

- (a) *the public interest and in particular:*
 - public security,*
 - defence and international relations,*
 - relations between and/or with the Member States or Community or non-Community institutions,*
 - financial or economic interests,*
 - monetary stability,*
 - the stability of the Community's legal order,*
 - court proceedings,*
 - inspections, investigations and audits,*
 - infringement proceedings, including the preparatory stages thereof,*
 - the effective functioning of the institutions;*
- (b) *privacy and the individual, and in particular:*
 - personnel files,*
 - information, opinions and assessments given in confidence with a view to recruitments or appointments,*
 - an individual's personal details or documents containing information such as medical secrets which, if disclosed, might constitute an infringement of privacy or facilitate such an infringement;*
- (c) *commercial and industrial secrecy or the economic interests of a specific natural or legal person and in particular:*
 - business and commercial secrets,*
 - intellectual and industrial property,*
 - industrial, financial, banking and commercial information, including information relating to business relations or contracts,*
 - information on costs and tenders in connection with*

1. Public access to documents may be limited on the following grounds:

- (a) *access may be denied on grounds of public interest where disclosure could significantly undermine*
 - public security,*
 - monetary stability,*
 - defence and military matters*
 - vital interests relating to the European Union's international relations.*
- (b) *access shall be denied where disclosure would be contrary to the protection, under law, of the right to privacy of an individual;*
- (c) *access may also be denied on grounds of commercial secrecy where this outweighs the public and private interest in disclosure;*

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

(Amendment 31)
Article 4(2) (new)

**2. 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.**

(Amendment 32)
Article 4(3) and (4) (new)

**3. Where the institution gives a
negative reply because part of the
document is covered by any of the
exceptions provided for in paragraph 1,
the institution shall provide an edited
version of the document.**

**4. When access is requested to a
document drawn up for the purpose of
internal consultation, information therein
on an official's personal opinions on
policy may be disclosed in a form that
cannot be traced to an individual person.**

(Amendment 33)
Article 4a (new)

Article 4a

Access to personal data

**The right of access to personal data held by
the institutions is regulated according to :**

**(a) Regulation ... of the European
Parliament and of the Council
based on Article 286 of the Treaty
when the data are treated in relation**

(Amendment 34)
Article 4b (new)

*to activities totally or partially
founded on the Treaty;*
*(b) the principles outlined in Annex III
which shall be applicable in the
absence of specific rules adopted on
the basis of the Treaties.*

Article 4b

Measures to be agreed by the institutions

*Within a period of one year following the
entry into force of this Regulation, the
institutions shall, in application of this
Regulation, agree, or modify existing
agreements, on the following common
elements which will provide the basis for
the adoption of the internal rules referred
to in Article 255 of the Treaty:*

*(a) agreed rules for the classification of
documents to which, following an
assessment, the exceptions in Article
4 apply and therefore to which
access may be limited, including:*

*-treatment and protection of such
documents, including highly
confidential documents;*

*-application of security gradings
(top secret, secret, confidential
or restricted) indicating the
level of security in cases where
the exceptions in Article 4 apply
and restrictions on access
within an institution or between
the institutions are justified;*

*-transmission of classified
documents between the
institutions and procedures for
resolving conflicts between the
institutions in cases of doubt on
the confidential nature of
documents, including if
appropriate the establishment of
a European Information
Authority;*

*-procedures relating to the provision
of information classified as
confidential to a select
committee of the European
Parliament according to the*

- sensitivity of the documents;*
- (b) general measures on the production, storage and diffusion of documents (through a common interface), including measures on quality of drafting of legislation and archiving of documents⁽¹⁾.**

The agreements will be adopted by the Council acting by a simplified qualified majority in accordance with Article 205(2) 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.

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- (¹) As defined in Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1.)**

(Amendment 35)
Before Article 4c, heading (new)

CHAPTER II

THIRD PARTIES AND MEMBER STATES

(Amendment 70)
Article 4c (new)

Documents of Member States or third parties

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

limited in time.

3. The Member State or third party may submit a public version which may be disclosed by the institution.

4. The institutions shall decide according to guidelines to be agreed in the framework of an interinstitutional agreement whether the document or part of document in question can be made public.

5. If the institution decides that, contrary to the opinion of the Member State or third party, the document or part of the document does not fall within the exceptions in Article 4(1) and should therefore be disclosed, the institution shall immediately inform the third party or Member State of the reasons for disclosure and the date on which the information will be disclosed (which will not be less than one week from the date of notification) and of its right to seek interim measures from the European Court of Justice.

(Amendment 37)
Article 4d (new)

Article 4d

Relationship with the Member States

1. Where a Member State receives a request for documents considered classified by an institution and which according to the rules of that Member State may be disclosed, the Member State shall immediately inform the institution.

2. The Member State shall decide whether the documents or parts of document in question can be disclosed.

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

(Amendment 38)
Before Article 4e, heading (new)

CHAPTER III

ACCESS TO DOCUMENTS

Section 1 Right of Access

(Amendment 39)
Article 4e (new)

Article 4e

Publication of documents in the Official Journal

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

(Amendment 40)
Article 5

Processing of initial applications

1. All applications for access to a document shall be made in writing in a sufficiently precise manner to enable the institution to identify the document. The institution concerned may ask the applicant for further details regarding the application.

In the event of repetitive applications and/or applications relating to very large documents, the institution concerned shall confer with the applicant informally, with a view to finding a fair solution.

2. Within ***one month*** of registration of the application, the institution shall inform the applicant, in a written ***and reasoned*** reply, of the outcome of the application.

3. Where the institution gives a negative reply to the applicant, ***it*** shall inform ***him*** that, within one month of receiving the reply, he is entitled to make a confirmatory application asking the institution to reconsider its position, ***failing which he shall be deemed to have withdrawn the original application.***

Documents accessible on written application

1. All applications for access to a document shall be made in writing ***in one of the official languages of the institutions*** in a sufficiently precise manner to enable the institution to identify the document. The institution concerned may ask the applicant for further details regarding the application ***for the purposes of identifying the documents.***

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

2. Within ***two weeks*** of registration of the application, the institution shall inform the applicant, in a written reply, of the outcome of the application ***and, if the application is accepted, transmit the documents within the same period.***

3. Where the institution gives a negative reply to the applicant, ***the institution shall state the reasons for its refusal, the period of time during which the document cannot be disclosed and, where relevant, the source from which the applicant may obtain the document.***

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.

Failure to reply within the prescribed time-limit shall be treated as a negative response.

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

3b. If the institution considers that the document may be disclosed within six months of receipt of the application, the institution shall send the document to the applicant not more than two weeks after the date on which the document can be disclosed.

4. In exceptional cases, the *two-week* 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.

4a. 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.

(Amendment 41)

Article 6

Processing of confirmatory applications; *remedies*

1. Where the applicant submits a confirmatory application, the institution shall reply to him in writing within *one month* of registration of the application. If the institution decides to maintain its refusal to grant access to the document requested, it shall state the grounds for its refusal and inform the applicant of the remedies open to him, namely court proceedings and a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the *EC Treaty*, respectively.

2. In exceptional cases, the time-limit provided for in paragraph 1 may be extended by one month, provided that the applicant is notified in advance and that detailed reasons are given.

Failure to reply within the prescribed time-limit shall be treated as a negative response.

Processing of confirmatory applications

1. Where the applicant submits a confirmatory application, the institution shall reply to him in writing within *two weeks* of registration of the application *and, if the application is accepted, transmit the documents to him within the same period.* If the institution decides to maintain its refusal to grant access to the document requested, it shall state the grounds for its refusal and inform the applicant of the remedies open to him, namely court proceedings and a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the *Treaty*, respectively.

2. In exceptional cases, the time-limit provided for in paragraph 1 may be extended by one month, provided that the applicant is notified in advance and that detailed reasons are given.

Failure to reply within the prescribed time-limit shall be treated as a negative response.

positive decision.

seek the remedies in Article 9c.

(Amendment 42)
Heading (new)

Section 2 Exercise of the right of access

(Amendment 43)
Article 7

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

The costs of *his doing so* may be charged to the applicant.

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

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

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

In the case of very large documents or a very large number of documents the cost of *making copies* may be charged to the applicant. ***The charge has to be limited to a reasonable sum which will not exceed the real cost of production of the copies. The cost of providing documents shall be determined annually (initially on the basis of estimates) with a view to establishing the rates which shall be made public. Consultation on the spot will be free of charge.***

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

Documents shall be supplied in the form requested by the applicant, e.g. electronically or in an alternative format (such as Braille, large print or tape).

2a. Parliamentary scrutiny of all documents excluded from public access shall be assured by regularly informing a body of the European Parliament in accordance with the format agreed in the interinstitutional agreement adopted pursuant to Article 4b.

(Amendment 44)

Article 8

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.

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

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

(Amendment 45)
Article 9

Information and registers

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

Information

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

- (a) the rules which are followed internally;*
- (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 person to whom written applications for documents should be addressed;*
- (d) the means of access to the register;*
- (e) a code of conduct on transparency for officials.*

(Amendment 46)
Article 9a (new)

Article 9a

Registers

1. Within three months of the entry into force of this Regulation each institution shall keep a register of all documents held, drawn up, received and sent by it. This register must be widely accessible to the public.

A document shall be introduced in the register as soon as the institution or body has taken a formal decision or has filed or sent the document to other internal bodies, institutions or third parties or

when the following conditions are met;

- (a) a decision, a contractual commitment, a memorandum and other similar documents: when they have been approved;*
- (b) minutes: when they have been scrutinised and approved;*
- (c) invitations to tender, to provide information, to comment on a proposal: when they have been approved;*
- (d) procurement cases: when the contract has been awarded;*
- (e) reports, discussion papers and similar documents: when they are in the possession of the institution or body in question.*

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

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

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

4. Wherever possible documents shall be made directly accessible via the Internet and other forms of computer telecommunications. The documents referred to in paragraph 3 above shall be made directly available within three months of the entry into force of this Regulation.

(Amendment 47)
Before Article 9b, heading (new)

Section 3 Information Officers.

(Amendment 48)
Article 9b (new)

Article 9b

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

1. Within six months of the entry into force of the Regulation, each Union institution shall appoint at least one person of appropriate rank as the Information Officer, with the task of:

(a) deciding on the response to confirmatory applications and ensuring the correct application of the exceptions in Article 4;

(b) ensuring in an independent manner the internal application of rules relating to transparency and supervising the maintenance of the register of documents for that institution;

(c) ensuring that responses to citizens respect the language rules in Article 21 of the Treaty and providing assistance to citizens seeking further information on a subject in which the institution is involved.

2. In application of this Regulation, the institutions shall take all necessary steps and measures to meet demand for disclosure of documents.

3. The Information Officer shall be provided with the staff and resources required for the performance of his/her duties.

4. Further rules concerning the Information Officer shall be laid down in the internal rules of each institution or body.

(Amendment 49)
Before Article 9c, heading (new)

(Amendment 50)
Article 9c (new)

CHAPTER IV
REMEDIES AND REPORTS

Article 9c

Remedies

1. An applicant who receives a negative response to a confirmatory application may, in accordance with Article 195 of the Treaty, submit a complaint to the Ombudsman with a view to examining whether a case of maladministration has occurred.

2. An applicant who receives a negative response to a confirmatory application may, in accordance with Article 230 of the Treaty, institute proceedings before the European Court of Justice.

3. Where an institution decides to disclose a document against the wishes of a third party, it shall give the third party at least one week in which to make an application for interim measures in accordance with Article 243.

4. The Council shall consider whether changes need to be made to the rules of procedure of the Court of Justice and the Court of First Instance in relation to access to documents, in particular in relation to confidential documents and costs in transparency cases.

(Amendment 51)
Article 9d (new)

Article 9d

Reports

1. Within a period of three years following the entry into force of this Regulation the

institutions shall produce a report setting out all the measures taken to implement this Regulation.

2. Each year, each institution shall submit to the European Parliament a report for the preceding year setting out the number of cases in which the institution refused to grant access to documents and the reasons for such refusals.

(Amendment 52)
Heading (new)

CHAPTER V
TRANSITIONAL PROVISIONS

(Amendments 53 and 55)
Article 10

Article 10

Effect

Each institution shall adopt in its rules of procedure *the* provisions ***required to give effect to*** this Regulation. Those provisions shall take effect on ... [***three months*** after the ***adoption*** of this Regulation].

Article 11a

Effect

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

(Amendment 54)
Article 11, first paragraph

This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Communities. ***It shall be applicable from & [three months from the date of adoption of this Regulation].***

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

(Amendment 56)
Article 11b (new)

Article 11b

Repeal

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

(a) Council Decision 93/731/EC of

20 December 1993 on public access to Council documents as amended by Council Decision 2000/527/EC of 14 August 2000,

- (b) Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents,
- (c) *European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents,*
- (d) *Decision of the Executive Committee of 14 December 1993 concerning the confidentiality of certain documents [SCH/Com-ex(93) 22 rev]⁽¹⁾,*
- (e) *Decision of the Executive Committee of 23 June 1998 concerning the confidentiality of certain documents [SCH/Com-ex(98) 17]⁽²⁾,*
- (f) *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.*

⁽¹⁾ OJ L 239, 22.9.2000, p. 129.

⁽²⁾ OJ L 239, 22.9.2000, p. 137.

(Amendment 57)
Article 11c (new)

Article 11c

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 make the Council Act of 3 November 1998 adopting rules on the confidentiality of Europol

information⁽¹⁾ compatible with the principles in this Regulation.

⁽¹⁾ *OJ C 26, 30.1.1999, p. 10.*

(Amendment 58)
Annex I (new)

Annex I
Specific Rules

(Amendment 59)
Annex II (new)

Annex II
Agencies

CEDEFOP European Centre for the Development of Vocational Training

European Foundation for the Improvement of Living and Working Conditions

European Environment Agency

European Training Foundation

European Monitoring Centre for Drugs and Drug Addiction

European Agency for the Evaluation of Medicinal Products

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

European Agency for Safety and Health at Work

Community Plant Variety Office

Translation Centre for the bodies of the Union

European Observatory for Racism and Xenophobia

(Amendment 60)
Annex III (new)

Annex III

Access to personal data foreseen in Article 4a

1. Data subjects must be informed of the collection of personal data concerning

them and of any processing, unless the provision of that information is impossible or involves a disproportionate effort.

2. The information to be provided under point 1 must be that which is necessary, in view of the specific circumstances of the collection of the data, to guarantee to the data subject in question that the data are processed fairly.

3. All data subjects have the right of access to their personal data and to have communicated to them in an intelligible form, without constraints, at reasonable intervals and without excessive delay or expense, data concerning them and to obtain, as appropriate, the rectification of incomplete or inaccurate data and the erasure of data which have been processed unlawfully.

4. Access may be direct or indirect, for example via a supervisory authority, and may be subject only to restrictions linked to the object or specific nature of the instrument concerned.

5. [Other principles to be developed].

(Amendment 61)
Annex IV (new)

Annex IV

Documents to be published in the Official Journal

*1. The following documents shall be published in the Official Journal:
Acts*

(a) Regulations, directives and decisions referred to in Article 254(1) and (2) of the EC Treaty and in Article 163 of the Euratom Treaty;

(b) the framework decisions, decisions and conventions referred to in Article 34(2) of the Treaty on European Union;

- (c) the conventions signed between Member States on the basis of Article 293 of the EC Treaty;*
- (d) international agreements concluded by the Community or in accordance with Article 24 of the Treaty on European Union;*
- (e) directives other than those referred to in Article 254(1) and (2) of the EC Treaty, decisions other than those referred to in Article 254(1) of the EC Treaty, recommendations and opinions;*

Proposals

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

Common positions

- (h) the common positions adopted by the Council in accordance with the procedures referred to in Articles 251 and 252 of the EC Treaty, the reasons underlying those common positions, and the common positions referred to in Article 34(2) of the Treaty on European Union;*

2. The following shall be published in the Official Journal, unless the Council or the Committee of Permanent Representatives decides by qualified majority voting, on a case-by-case basis, that there should not be publication in the Official Journal:

- (a) the common strategies, the joint actions and the common positions referred to in Article 12 of the Treaty on European Union and the measures implementing such joint actions;*
- (b) the joint actions, the common positions or any other decision adopted on the basis of a*

common strategy, as provided for in the first indent of Article 23(2) of the Treaty on European Union;

(c) any measures implementing the decisions referred to in Article 34(2) of the Treaty on European Union and any measures implementing conventions drawn up by the Council in accordance with Article 34(2) of the Treaty on European Union.

3. Where an agreement concluded between the Communities between the C more more more States or inter more organisations organisations sets up a body org with powers of decision, th with powers of shall shall decide, when such shall agreement agreement is concluded, whether decisions decisions to be taken by that decisio should should be should be publ Journal.

(Amendment 62)
Annex V (new)

Annex V

Documents to be included at a minimum in the register:

(a) all documents created in the course of a procedure for the adoption of legally binding measures;

(b) all documents relating to the formulation and adoption of policy or strategy;

(c) all documents relating to the implementation of Union law;