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<Commission>{JURI}Committee on Legal Affairs and the Internal Market</Commission>

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<Date>{10/10/2000}10 October 2000</Date>

## <TitreType>OPINION</TitreType>

<CommissionResp>of the {JURI}Committee on Legal Affairs and the Internal Market</CommissionResp>

<CommissionInt>for the {LIBE}Committee on Citizens' Freedoms and Rights, Justice and Home Affairs</CommissionInt>

<Titre>on the proposal for an European Parliament and Council regulation regarding public access to European Parliament, Council and Commission documents</Titre>

<DocRef>(COM(2000) 30 C5-0057/2000 2000/0032(COD))</DocRef>

Draftsman: <Depute> Heidi Anneli Hautala </Depute>



## <Procedure>PROCEDURE

The {JURI} Committee on Legal Affairs and the Internal Market appointed Heidi Anneli Hautala draftsman at its meeting of {29.02.2000} 29 February 2000.

It considered the draft opinion at its meetings of 12 September, 9 October and 10 October 2000.

At the latter meeting it adopted the amendments below unanimously.

The following were present for the vote: Willi Rothley, vice-chairman acting chairman;; Heidi Anneli Hautala, draftsman; Charlotte Cederschiöld (for Malcolm Harbour), Bert Doorn, Janelly Fourtou, Evelyne Gebhardt, Gerhard Hager, The Lord Inglewood, Jean Lambert (for Raina A. Mercedes Echerer pursuant to Rule 153(2)), Klaus-Heiner Lehne, Donald Neil MacCormick, Hans-Peter Mayer, Manuel Medina Ortega, Bill Miller and Diana Paulette Wallis.

<AmJust>

The proposed amendments to the Commission's proposal for a Regulation pursuant to Article 255 of the EC Treaty aim at a coherent, clear and transparent legislation which realises the fundamental democratic principle that decisions are taken as openly as possible. The new code on access to documents should consolidate and further develop existing rights within the EU framework. An equally important task is to guarantee that rights enjoyed by EU citizens under their domestic law will be maintained.

In the light of the recent discussion on which legal form the future code should take, your draftsman has come to the conclusion that a Regulation would best meet the basic requirements set for an EU law on access to documents. Your draftsman has deliberately tried to avoid (too) specific provisions, which, according to Article 255, should be elaborated by each institution within its own Rules of Procedure.

It is significant that the principle of openness is expressed in the second paragraph of the constitutive Article 1 of the TEU. This shows due understanding for the function of openness as a precondition for democratic legitimacy in the European Union. In addition, the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>1</sup>, which the Union, through Article 6(2), TEU, has undertaken to respect, recognises the right to information as a precondition for political participation by citizens and to the functioning of parliamentary control.

The objective of Article 2, indent 3, TEU, is to strengthen the protection of the right and interests of the nationals of (its) Member States through the introduction of a citizenship of the Union. Any EU regime which would weaken rights enjoyed by EU citizens under their domestic law would, therefore, be contrary to the objective of EU citizenship. Limiting existing rights to information under Member State law would be tantamount to decreasing the openness of decision making and would consequently be contrary to the objective expressed in Article 1, according to which decisions must be taken as openly as possible.

Public access to documents is the definite core of the right to information<sup>2</sup>: Documents are the primary source through which the content of a decision and its grounds and foundations can be verified and documentation is, as a rule, a condition for the credibility of an intervention in public debate. That decisions and the grounds for them must be documented and the documents registered in an administration based upon the rule of law is evident, as this is a precondition for accountability as well as transparency. Thus, what is at stake in the Regulation is no less than rules on the scope and limits of democracy in the EU.

A comprehensive register of documents is indispensable, since it will serve both citizens and officials dealing with requests for documents. The citizen cannot try to find information, if he does not know which documents exist. It is necessary that a register contains references to all

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<sup>1</sup> See, in particular, the First Protocol to the Convention and more particularly Article 3 thereof.

<sup>2</sup> It is necessary to stress that information policy can never be a substitute for the right actively to seek and receive information. On the broader concept of the right to information, see the model code on good administrative behavior presented by the European Ombudsman, which includes rules on the duty to give answers to questions about the Community and Union.

documents, including those which have been classified as confidential, in order to enable citizens to challenge the classification.

Present *acquis* in the field of access to documents has been developed by the TFI and ECJ mainly on the basis of the Council's and Commission's respective decisions (731/93 and 94/90) through which these institutions have responded to the demands of the Birmingham, Edinburgh and Copenhagen summits and Declaration 17 attached to the Maastricht Treaty. It is worrying that the Commission's proposal, although worthy of support in some respects, appears to take a step backwards in others.

The peculiar definition of a document in Article 3 of the proposal, which aims at the exclusion from the scope of application of the Regulation of documents for internal use, is highly problematic: Would this include, e.g., internal communication aiming at concealing instances of maladministration from the public? Your draftsman considers that also preparatory documents which are considered in the decision making process must fall under the principle of the widest possible access, thereby enabling citizens to have influence in the decision making process prior to the final decision.

The extensive list of mandatory exemptions proposed in Article 4 is equally unacceptable, not only from the perspective of democracy, but also from the point of view of the rule of law: What kind of information is envisaged by, e.g., the exception for the confidentiality needed in order to protect the stability of the legal order of the Community? What is left of openness, in a legal community based on cooperation between EU institutions and Member States, if any document drawn up by the latter or another third party must be declared confidential on the request of the author?

Whereas the Commission's proposal would make the exemptions mandatory, your draftsman feels that, with the exception of the protection of the right to privacy, under law, of an individual, the application of an exemption should be based on a comparing of the interests involved. Also some exceptions which have been traditionally recognised by many national legislators should be reconsidered in the light of a changing reality: Should there, e.g., be a *blanco* exception for the protection of international relations in a globalizing world, where ever more decisions which directly affect the life of citizens and the conditions of business have been shifted from national sovereignty to the international sphere?

After the entry into force of the Amsterdam Treaty it is clear that new rules on access to documents can only be adopted by co-decision procedure and with involvement of the European Parliament, as stipulated in Article 255. Excluding certain policy areas as a whole from the scope of access to documents would be against the provisions of the Treaty and thus unacceptable. The first paragraph of Article 28 of the TEU stipulates that Article 255 applies also the provisions on a Common Foreign and Security Policy. Respectively, provisions on cooperation in the fields of Justice and Home Affairs belong to the scope of access to documents according to the first paragraph of Article 41 of the TEU.

Therefore, all policy areas of the European Union, as confirmed by the decisions by the European Ombudsman and the jurisprudence by the TFI and ECJ, must adhere to the basic principles of openness and public scrutiny. This applies also to the rapidly evolving European Security and Defence Policy. In this policy area, the possibility of using a discretionary

exemption on the basis of the protection of public security would certainly be sufficient to cover the legitimate security interests of the European Union and its Member States, including possible operational military secrets.

Finally, the crucial importance of a well-functioning, speedy, and affordable procedure of review must be stressed. Granting the TFI and ECJ as well as the European Ombudsman the explicit right to examine a contested document - without disclosing it to the parties - would be an important step in this direction. While recognising that reforms needed in this respect fall outside the scope of the present Regulation, your drafts person would like to draw attention to, and express her support for the proposal, by the Court of First Instance, to amend its Rules of Procedure in order for the Court to be able to examine contested documents *in camera*<sup>3</sup>

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<sup>3</sup> The Court of First Instance has proposed an amendment to Article 67(2) of its Rules of Procedure to this effect. See also the Order by the ECJ of 21 September 1999 (C-204/97).

</AmJust>

## AMENDMENTS

The {JURI} Committee on Legal Affairs and the Internal Market calls on the {LIBE} Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

<SubAmend>

Text proposed by the Commission <sup>1</sup>	Amendments by Parliament
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<LANG:FR><Amend>(Amendment <NumAm>1</NumAm>)

Recital 1

**Whereas:**

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

**(1) whereas article 1 of the Treaty on European Union, as amended with effect from 2 October 1997, and as entered into force on 1 May 1999, lays down, inter alia, that decisions of the Union shall be taken with the greatest possible openness and as close as possible to the citizen,**

<TitreJust>Justification:</TitreJust>

<AmJust>The proposed replacement of recitals 1-12 of the Commission's proposal with a new set of recitals incorporates the proposals presented by the Standing Committee of Experts on International Immigration, Refugee and Criminal Law (Utrecht, July 1999). It aims at ensuring that the guidelines for interpreting the articles of the Regulation are consistent with the objectives of the Regulation which, in turn, should be consistent with hierarchically superior norms. The recitals drafted by the Commission (while perhaps consistent with the Commission's proposal) do not fully qualify in this respect: Recital 9 tries to accommodate the interest of the institutions as organisations to the detriment of citizens' rights; recital 12 is misleading in misinterpreting the loyalty principle; and reference in recital 13 to the non-applicability of the Regulation in lack of implementation provisions does not correctly reflect the legal nature and status of a Regulation under European law.

</AmJust>

</Amend></LANG:FR><LANG:FR><Amend>(Amendment <NumAm>2</NumAm>)  
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***

***(2) whereas improving the protection of the rights and interests of citizens of the Member States of the Union is listed in Article 2 as an objective of the Union***

<TitreJust>Justification:</TitreJust>

<AmJust>See justification amendment 1.</AmJust>

</Amend></LANG:FR><LANG:FR><Amend>(Amendment <NumAm>3</NumAm>)  
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) whereas restrictions on the openness which a citizen of a Member State may invoke under his domestic law is contrary to that objective of the Union,***

<TitreJust>Justification:</TitreJust>

<AmJust>See justification amendment 1.</AmJust>

</Amend></LANG:FR><LANG:FR><Amend>(Amendment <NumAm>4</NumAm>)  
Recital 4

***(4) The purpose of this Regulation is to widen access to documents as far as possible, in line with the principle of***

***(4) whereas this is confirmed, likewise in Article 2, by the stipulation that the objectives of the Union shall be achieved***



***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***

***while respecting the subsidiarity principle***

<TitreJust>Justification:</TitreJust>

<AmJust>See justification amendment 1.</AmJust>

</Amend></LANG:FR><LANG:FR><Amend>(Amendment <NumAm>5</NumAm>)  
Recital 5

***(5) Since the question of access to documents is not covered by provisions of the ECSC and Euratom Treaties, this Regulation will apply to documents concerning the activities covered by those two Treaties. This was confirmed by Declaration No 41 attached to the Final Act of the Treaty of Amsterdam***

***(5) whereas, as laid down in Article 6(2) of the Treaty on European Union, the European Union respects fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950,***

<TitreJust>Justification:</TitreJust>

<AmJust>See justification amendment 1.</AmJust>

</Amend></LANG:FR><LANG:FR><Amend>(Amendment <NumAm>6</NumAm>)  
Recital 6

***(6) Under Articles 28(1) and 41(1) of the Treaty on European Union, the right of access also applies to documents relating to the common foreign and security policy and to police and judicial cooperation in criminal matters***

***(6) whereas the determination by the European Union institutions of the general principles and limits referred to in Article 255 of the Treaty establishing the European Community will contribute to the development and consolidation of democracy and the rule of law and to the objective of respect for human rights and fundamental freedoms,***

<TitreJust>Justification:</TitreJust>

<AmJust>See justification amendment 1.</AmJust>

</Amend></LANG:FR><LANG:FR><Amend>(Amendment <NumAm>7</NumAm>)  
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***

***(7) whereas the right of access to information is a precondition for political participation by citizens and is necessary to the functioning of parliamentary control and to the full exercise of democratic rights and duties derived from the European Convention for the Protection of Human Rights and Fundamental Freedoms, particularly the First Protocol to it, and more particularly Article 3 thereof,***

<TitreJust>Justification:</TitreJust>

<AmJust>See justification amendment 1.</AmJust>

</AmJust>

</Amend></LANG:FR><LANG:FR><Amend>(Amendment <NumAm>8</NumAm>)  
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) whereas pursuant to Article 28 of the Treaty on European Union the determination by the European Union institutions of the general principles and limits referred to in Article 255 of the Treaty establishing the European Community applies to the provisions concerning a common foreign and security policy,***

<TitreJust>Justification:</TitreJust>

<AmJust>See justification amendment 1.</AmJust>

</Amend></LANG:FR><LANG:FR><Amend>(Amendment <NumAm>9</NumAm>)

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) whereas pursuant to Article 41 of the Treaty on European Union the determination by the European Union institutions of the general principles and limits referred to in Article 255 of the Treaty establishing the European Community applies to the provisions concerning police and judicial cooperation in criminal matters,***

*<TitreJust>Justification:</TitreJust>*

*<AmJust>See justification amendment 1.</AmJust>*

*</Amend></LANG:FR><LANG:FR><Amend>(Amendment <NumAm>10</NumAm>)  
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) whereas the decisions of the Union may be taken without the aforesaid openness only in accordance with the limits laid down in this Regulation,***

*<TitreJust>Justification:</TitreJust>*

*<AmJust>See justification amendment 1.</AmJust>*

*</Amend></LANG:FR><LANG:FR><Amend>(Amendment <NumAm>11</NumAm>)  
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***

***(11) whereas the protection which citizens of the Union enjoy pursuant to international agreements should not be limited by the Union,***

<TitreJust>Justification:</TitreJust>

See justification amendment 1.<AmJust></AmJust>

</Amend></LANG:FR><LANG:FR><Amend>(Amendment <NumAm>12</NumAm>)  
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) whereas, in the light of the principle of equality and the general terms of Articles 1 and 2 of the Treaty on European Union, it is desirable that in future the general principles and limits governing citizens' right of access to documents as provided for by this Regulation should extend to all other institutions and bodies of the European Union,***

<TitreJust>Justification:</TitreJust>

<AmJust>See justification amendment 1.</AmJust>

</Amend></LANG:FR><LANG:FR><Amend>(Amendment <NumAm>13</NumAm>)  
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

(13) whereas, 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. 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 [8], Commission Decision

documents [8], Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents [9] and European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents.

94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents [9] and European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents.

<TitreJust>Justification:</TitreJust>

<AmJust>See justification amendment 1.</AmJust>

</Amend><LANG:EN><Amend>(Amendment <NumAm>14</NumAm>)  
<TitreAm>Article 2</TitreAm>

#### 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.**  
**It shall not apply** where specific rules on access to documents **exists**.

#### Scope of application

1. This Regulation shall apply to all documents held by the institutions, **whether** drawn up by them or received from third parties.

2. This Regulation shall not apply where specific rules on access to documents **provide for wider access to information.**

**3. The Regulation is without prejudice to higher standards of access under national legislation.**

<TitreJust>Justification:</TitreJust>

*The main aim of this amendment is to ensure that the Regulation corresponds to the fundamental objectives of the Treaties as defined, in particular, in Article 1 (2), TEU, according to which decisions in the Union shall be taken as openly as possible . This objective would not be achieved if the rights conferred by the Regulation could be limited by unspecified rules outside the Regulation. If the Regulation itself would limit the rights enjoyed by citizens in virtue of domestic legislation it would contradict Article 2, indent 3, TEU, according to which the objective of Union citizenship is to strengthen the protection of the rights and interest of the citizens of its Member States .<AmJust></AmJust>*

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;**

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

(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**

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) **wich relates to the exercise of public powers or functions;**

(b) "institutions" shall mean the European Parliament, the Council and the Commission **and bodies and institutions subordinate to them;**

(c) **Delete**

(d) **Delete**

(e) **Delete**

(f) **Delete**

*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.

A list of committees *set up by the Treaty or by the legislator to assist the Council or by the Commission to help it exercise its executive powers* shall be drawn up as part of the rules giving effect to this Regulation, as provided for in Article 10.

<TitreJust>Justification:</TitreJust>

*The casuistic definitions proposed by the Commission are not helpful in clarifying the concepts used . The definition proposed for a document would, in fact, leave an unpredictable margin of discretion to the institutions, to the detriment of legal certainty and the objective of the Regulation, in as far as this is to confer rights. The definitions of the institutions are not only superfluous, but also inappropriate and partly misguided, e.g., in respect to the political groups of the Parliament.*<AmJust></AmJust>

</Amend><LANG:EN><Amend>(Amendment <NumAm>16</NumAm>)  
<TitreAm> Article 4.1</TitreAm>

Exceptions

*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*

Exceptions

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

*(a) access shall be denied where disclosure would be contrary to the protection, under law, of the right to privacy of an individual;*

*(b) access may be denied on grounds of public interest where disclosure could significantly undermine*  
- *public security,*  
- *monetary stability,*  
- *legal proceedings,*  
*presupposing that the interest in*

*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 award procedures;*  
*(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.*

*disclosure is not greater than that in confidentiality.*

*(c) access may also be denied on grounds of commercial secrecy where this outweighs the public and private interest in disclosure.*

*(d) access to documents which are of direct and individual concern to a natural or legal person may only be denied when the reasons for confidentiality are exceptionally prevalent.*

*<TitreJust>Justification:</TitreJust>*

*The list of mandatory - exceptions proposed by the Commission would, if enacted, provide a justification for the exclusion of practically any document from the public domain. Not only is the list far too long and detailed for the purpose of a general Regulation, some of the proposed grounds for confidentiality, as, for instance, the effective functioning of the institutions or the stability of the Community's legal order are simply obscure. Bearing in mind the very nature and way of functioning of the Union it would be unacceptable that documents should be declared confidential on the request of third parties without any justification whatsoever. The amendment to point (d) aims at guaranteeing the rights of someone who can claim a status of being party in a matter.*

*<AmJust></AmJust><LANG:EN><Amend>(Amendment <NumAm></NumAm>17)  
<TitreAm>Article 4.2 </TitreAm>*

*2. 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.*

*</Amend></LANG:EN></Amend><LANG:EN><Amend>(Amendment  
<NumAm>18</NumAm>)  
<TitreAm> Article 5</TitreAm>*



#### 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.***

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.***

#### 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.

2. Within ***two weeks*** 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 ***give reasons and*** inform him that he is entitled to make a confirmatory application asking the institution to reconsider its position.

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.

<TitreJust>Justification:</TitreJust>

*The term repetitive applications is deleted since it is open to various interpretations and may be used against justified information needs of an active citizen. The one-month time-limits for reply by the institutions cannot be considered appropriate for a modern and efficient administration. The introduction of coherent internal procedures and, in particular, of a comprehensive register of documents by each institution, as proposed by your draftsman, would significantly reduce the time needed for processing requests. The provision concerning the legal effect of a lack of reply on behalf of the institutions should be deleted, as failing to reply must be considered inadequate administration and, therefore, should not be foreseen in a regulation as an alternative reaction available to the institutions. The power to presume that an application is withdrawn if the applicant does not react within a set time on a negative reply to a request should be abolished as contrary to the objective of the regulation.*

</Amend><LANG:EN><Amend>(Amendment <NumAm>19</NumAm>)  
<TitreAm>Article 6</TitreAm>

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 positive decision.***

Processing of confirmatory applications;  
remedies

1. Where the applicant submits a confirmatory application, the institution shall reply to him in writing within **two weeks** 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 **two weeks**, provided that the applicant is notified in advance and that detailed reasons are given.

<TitreJust>Justification:</TitreJust>

*See the justification for the previous amendment.*<AmJust></AmJust>

</Amend><LANG:EN><Amend>(Amendment <NumAm>20</NumAm>)  
<TitreAm>Article 7</TitreAm>

Exercise of the right to access

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

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.

Exercise of the right to access

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

The costs ***which*** may be charged to the applicant ***should be reasonable***.

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.

**3. Documents shall be supplied in the form requested by the applicant if they are available in that form, e.g. electronically or in an alternative format, (such as Braille, large print or tape).**

4. 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.

<TitreJust>Justification:</TitreJust>

*The first amendment aims at ensuring that costs for copies are not used to discourage or unduly burden applicants. The second amendment suggests that documents shall be made available in formats accessible to all citizens, including blind and partially sighted people.*

<AmJust></AmJust>

</Amend><LANG:EN><Amend>(Amendment <NumAm>21</NumAm>)  
<TitreAm>Article 8</TitreAm>

**Reproduction for commercial purposes or other forms of 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.**

**Delete**

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<TitreJust>Justification:</TitreJust>

*The Commission s proposal is far too vague and could, as it stands, be used even against normal journalistic use of a document for the purpose of informing the public.<AmJust></AmJust>*

</Amend><LANG:EN><Amend>(Amendment <NumAm>22</NumAm>)  
<TitreAm>Article 9</TitreAm>

**Information and registers**

**Registers and information**

**1. Documents shall be entered into the register at the time of their completion or reception. A document drawn up for internal consultation shall be entered into the register at the time of its inclusion into the deliberation of a decision within the administrative unit where it has been**

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.**

*produced or when its communicated to another unit.*

**2. Each institution shall keep a register of all documents drawn up, received and sent by the institution. The register shall be easily accessible to all citizens and specify any classification of confidentiality of each document.**

**3. Each institution shall take the requisite measures to inform the public of the rights they enjoy as a result of this Regulation. The availability of alternative formats of documents shall be mentioned (such as Braille, large print or tape).**

<TitreJust>Justification:</TitreJust>

*The proposal that all institutions should have a register of documents is welcome, whereas the present formulation is far from adequate. The keeping of a register of all documents is not only a precondition for accountable administration, it is also indispensable for a functioning regime for public access to documents. Making the register easily available to the public, e.g. through posting it on the internet, ensures that interested parties can be aware of and identify existing documents. A comprehensive register is also essential for the institutions in facilitating the processing of requests. All documents should be classified when entered into the register. The public must, obviously, have the right to request for any document, regardless of classification.</TitreJust>*

<sup>3</sup> OJ C .