

1999

2004

<Commission>{AFCO}Committee on Constitutional Affairs</Commission>

<REFSTATUS>PROVISIONAL</REFSTATUS>
<REFVER></REFVER>

<Date>{10-08-2000} 10 August 2000 </Date>

<TitreType>DRAFT OPINION</TitreType>

<CommissionResp>of the {AFCO}Committee on Constitutional Affairs</CommissionResp>

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

<Titre>on the proposal for a Regulation of the European Parliament and of the Council
regarding public access to European Parliament, Council and Commission documents</Titre>
<DocRef>(COM(2000) 30final/2 C5-0057/00)

Draftsman: <Depute>Hanja Maij-Weggen </Depute>

(*Hughes Procedure)

<Procedure>**PROCEDURE**

The {AFCO}Committee on Constitutional Affairs appointed Hanja Maij-Weggen draftsman at its meeting of {27.06.2000}27 June 2000.

It considered the draft opinion at its meeting(s) ofAt the sitting of the President announced that this report should be drawn up in accordance with the Hughes Procedure by the Committee on Employment and Social Affairs and the Committee on Women's Rights and Equal Opportunities.

At the latter/last meeting it adopted the amendments below by ... votes to ..., with ... abstention(s)/unanimously.

The following were present for the vote: ... chairman/acting chairman; ... vice-chairman; ..., vice-chairman; ... draftsman; ..., ... (for ..), ... (for ... pursuant to Rule 153(2)), ... and

As the European Parliament stated in its resolution of 12 January 1999 on "openness within the European Union" 1 the development of greater openness and transparency is of vital importance if the European Union is to succeed in the future, since it will help to clarify EU policy choices, encourage wide and more balanced input into the policy process, reduce the scope for corruption and abuses of power, and generally help to promote wider public acceptance by European citizens of EU decisions.

As a result of demands formulated by the European Parliament and others earlier the Amsterdam Treaty has explicitly introduced the concept of openness into the EU Treaty, both by guaranteeing that there is a right of access to EU documents, and by stating that EU decisions must be taken as openly as possible and as closely as possible to the citizen.

The Treaties in their present form contain a provision expressing this concept with the quality of a fundamental citizen's right. It is Article 255 par. 1 of the EC Treaty introduced by the Treaty of Amsterdam:

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

The Commission proposal to be examined, has been made pursuant to Article 255 par. 2 EC Treaty obliging "the Council, acting in accordance with the procedure referred to in Article 251" to determine "within two years of the entry into force of the Treaty of Amsterdam (...) general principles and limits on grounds of public or private interest governing this right of access to documents".

Making this proposal, the Commission made an effort to turn "best Member State's practices" into the law, what has to be acknowledged. The proposal contains however also elements which seem to be inspired by old bureaucratic and "raison d'Etat" -reflexes and -hesitations. These need to and can be eliminated by way of amendments.

The European Union, by implementing in a truly democratic manner the fundamental citizen's right of access to documents, thus giving shape to the constitutional principle of openness and proximity to the citizen laid down in Article 1 of the Treaty on the European Union, has nothing to loose and only to win. This must of course not mean that the institutions should loose their "space to think", a space which is needed wherever operational options are developed, scrutinised and finally chosen.

<AmJust></AmJust>

AMENDMENTS

The {AFCO}Committee on Constitutional Affairs 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 ¹ | | Amendments by Parliament |
|--|--|--------------------------|
|--|--|--------------------------|

<Amend>(Amendment <NumAm>1</NumAm>)
<TitreAm>Art. 1(new)

Purpose</TitreAm>

1. This Regulation implements the constitutional principle laid down in Article 1 of the Treaty of the 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, with a view to the right of access of any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, to European Parliament, Council and Commission documents pursuant to Article 255 of the EC Treaty.

2. Pursuant to Article 255 (2) of the EC 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.

<TitreJust>Justification</TitreJust>

A first paragraph should point out that what follows is not "a gift" from the institutions to the citizen but simply the exercise of a duty introduced into the Treaty establishing the European Community as an expression of the democratic principles of openness and accountability, as defined in Article 1 of the Treaty of the European Union. According to Art. 255(2) EC Treaty the purpose of the act to be adopted is to define the "general principles and limits on grounds of public or private interest" to the fundamental right deriving from paragraph 1 of this provision. Thus, this act establishes an important link between the Union and its citizens.

¹ Report A4-0476/1998 by the Committee on Institutional Affairs, "Löow Report", following i.a. the Special Report by the European Ombudsman to the European Parliament (C4-0157/98)

</Amend>

</Amend><LANG:EN><Amend>(Amendment <NumAm>2</NumAm>)
Article 1a

<TitreAm>General principle and beneficiaries</TitreAm>

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**.

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

<TitreJust>Justification</TitreJust>

<AmJust>The words "**widest possible access**" could be misconstrued as meaning that there is a general discretion in the past of the institutions with regard to the right of access to documents. These words should be therefore deleted.

The other changes follow the wording of Art. 255 if the EC Treaty as the legal base of this Regulation.</AmJust>

</Amend><LANG:EN><Amend>(Amendment <NumAm>3</NumAm>)
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.

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.

2. This Regulation shall not apply to documents **falling under the** specific rules **listed in Annex 12**.

<TitreJust>Justification</TitreJust>

The "**access to documents from third parties**" should be dealt with exclusively under the exemptions laid down in Art. 4.

Documents "**already published or accessible to the public by other means**" should not be generally excluded from the scope.

The reference to specific rules is too vague as it leaves all specific rules applicable without any examination or justification. Therefore, existing specific rules should be examined and where justified included in an annex to the Regulation.

<LANG:EN><Amend>(Amendment <NumAm>4</NumAm>)
<TitreAm>Article 2 par. 3 (new)

Scope</TitreAm>

3. This Regulation does not preclude the right of Member States, to grant access, in accordance with their national legislation, access to documents authored by them

<TitreJust>Justification

</TitreJust>

The Regulation should be without prejudice to higher standards of access under national legislation. Thus, the scope of national legislation granting access to documents of an originally national character should not be limited by the Regulation.

<AmJust><LANG:EN><Amend>(Amendment <NumAm>5</NumAm>)
<TitreAm>Article 2 par. 4 (new)

Scope</TitreAm>

4. This Regulation does not authorise the withholding of access to documents from the European Parliament

<TitreJust>Justification</TitreJust>

The purpose of this Regulation is to implement and define the limits of the citizens' right of access to documents on the grounds laid down in Art. 255 TEC.

The European Parliament, as a body with power of scrutiny, cannot be subject to the same limitations¹. <AmJust></AmJust>

</Amend><LANG:EN><Amend>(Amendment <NumAm>6</NumAm>)
<TitreAm>Article 3 letter a) and b) and para. 2

Definitions</TitreAm>

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;

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.

For the purposes of this Regulation:

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

"document" shall not mean informal information which serves the provision of advice or the free exchange of ideas within the institutions.

(b) "institutions" shall mean the European Parliament, the Council and the Commission **as well as subsidiary bodies and independent regulatory agencies as listed in Annex II3;**

<TitreJust>Justification</TitreJust>

The wording suggested for the definition of the "document" is intended to better express the idea underlying the exemption.

The scope should be as broad as possible so that in principle documents can be excluded from access only under exemptions defined in the Regulation. Nevertheless, there has to be a certain threshold for the application of this Regulation. Otherwise, every text (whatever its content) would also have to be listed in the Register. This would be (a) almost unmanageable and (b) inappropriate in relation to information that is only of internal character.

The reference to subsidiary bodies and independent regulatory agencies in the definition of institutions is made in order to point out that all entities which exercise functions of the institutions are covered by the Regulation. In order to avoid any uncertainties exercise functions of the institutions are covered by the Regulation. In order to is to expressly list them in an annex.

</Amend><LANG:EN><Amend>(Amendment <NumAm>7</NumAm>)
<TitreAm>Article 3a (new)²

Applications</TitreAm>

¹ See to the same effect the US Freedom of Information Act (FOIA) as amended by the 1996 Electronic Freedom of Information Act (E-FOIA)

² corresponds to Art. 5 para 1 of the Commission's proposal with modifications.

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.**

1. All 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.

"In writing" also comprises the processing of an application by electronic means such as fax or e-mail.

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.

(delete)

2. The document shall be forwarded in the language of the application wherever possible.

<TitreJust>Justification</TitreJust>

The insertion of an Article 3 a Applications with partially the wording of Art. 5 seems appropriate as these matters are more properly dealt with in an extra Article. The reference to Community languages also seems useful as it reflects the established Community practice. In the same respect the reply in the language of the application seems appropriate and has an example in the Decision of the European Parliament of 10th July 1997 on access to European Parliament documents, Art. 2 par. 2.

In the "electronic age" it furthermore does not seem appropriate to limit applications to "written" letters.

<AmJust></AmJust>

</Amend><LANG:EN><Amend>(Amendment <NumAm>8</NumAm>)
<TitreAm>Article 3b (new)

Classification of Documents</TitreAm>

Access to documents can be limited only in accordance with the exemptions provided for in Article 4. Where only parts of a document fall under an exemption, access can be refused only with respect to these parts.

If an institution wishes to limit access to a document, it has to classify it as non-public as soon as the document is produced or received and at the latest when it is listed in the register referred to in Article 9. A later classification cannot limit the access to a document.

The classification must embody a reference to the exemption concerned.

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

All classifications not limited in time shall be reviewed at regular intervals in order to ascertain whether they are still justified and lose their effect in any case after a period of twenty years.

All non-classified documents shall be deemed to be public.

<TitreJust>Justification</TitreJust>

Instead of leaving it to a case by case approach whether or not a document is publicly accessible, it is more workable, both, for the institution and for the applicant, to classify all documents once they are produced or received. This simplifies the processing of applications which would otherwise require a case by case approach. This simplifies the processing of applications which would otherwise require a case by case approach.

At the same time this will enhance transparency in the working of the institutions, as it will make it clear for the citizen which documents are accessible and which are not.

The classification may of course be challenged in a given case by the applicant and will then be reviewed by the courts.

The system of classification and registration of documents as proposed in this opinion is also of importance for the individual. The system of classification and registration of documents provides clear guide lines for the application and interpretation of Article 17 of the staff rules : An infringement of this rule can only be invoked where a document classified as non-public was handed out !

<PathFdr>PA\417392EN.doc</PathFdr>

7/13

<NoPe>PE </NoPe>286.945

Exemptions</TitreAm>

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 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.

1. The institutions *may* refuse access to documents where disclosure *would* significantly *harm*:

(a) the public interest *as regards*:

- security *in a Member State,*

- defence and *military matters*

- international relations,

(delete)

(delete)

(delete)

(delete)

- court proceedings,

(delete)

(delete)

(delete)

(b) *the* privacy *of* 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 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;

(delete)

<TitreJust>Justification</TitreJust>

This Article must contain only an exhaustive list of reasons to be invoked by institutions for refusing access wherever they deem it necessary. There is no need to make exemptions compulsory for the institutions.

The wording "and in particular" leaves discretion to the institution to make exemptions even outside the categories listed in this Article. This seems inappropriate in the light of Art. 255, as the limits to the right granted by this Article have to be defined as precisely as possible.

The reference to "relations between and/or with the Member States or Community or non-Community institutions" is too broad for an exemption. This notion can already be observed within the other categories of the Article.

The secrecy of Commission infringement proceedings is not undisputed. These procedures should be more transparent than secret. Certain legitimate interests in confidentiality could be dealt with in special rules to be drawn up.

The broad notion of "the effective functioning of the institutions" could void the right of access completely.

Confidentiality concerning third party documents cannot simply be granted on request without any justification, as this would enable third parties categorically to keep secret every document submitted to an EC institution.

In the amendment the term "exceptions" has been replaced by the term "exemptions", which better expresses the idea that demands for access to documents may only exceptionally be "exempted" from the rule which grants access.

Processing of initial applications</TitreAm>

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.

(moved to Art. 3 a)

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.

3. Where the institution gives a negative reply to the applicant, it shall **give reasons** and 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.

4. The institution may delay access to documents where these documents are intended to be sent out to a natural or legal person or a Member State, until the documents are actually sent out to the addressee.

<TitreJust>Justification</TitreJust>

As regards paragraph 1 see Art. 3 a.

A reasoned reply seems necessary only in case of a negative answer.

Sometimes (e.g. in the field of competition law) a need may arise not to disclose information before it has actually been sent out to its primary addressee. In these cases it is justifiable to withhold access to those documents until they have been sent out.

<AmJust></AmJust>

Processing of confirmatory applications; remedies</TitreAm>

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.

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, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively, **and in the relevant provisions of the EU Treaty.**

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.

<TitreJust>Justification</TitreJust>

To consider the absence of a decision as a quasi positive decision does not in itself lead effectively to the accessibility of the document. The possibility of a mediation or court proceedings seems more appropriate.

<AmJust></AmJust>

</Amend><LANG:EN><Amend>(Amendment <NumAm>12</NumAm>
<TitreAm>Article 7

Exercise of the right to access</TitreAm>

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.
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.**

2.

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

<TitreJust>Justification</TitreJust>

*In order not to create any unnecessary obstacles to a request for access to documents a limitation to the principle of cost bearing seems appropriate*¹.<AmJust></AmJust>

</Amend><LANG:EN><Amend>(

</Amend><LANG:EN><Amend>(Amendment <NumAm>13</NumAm>
<TitreAm>Article 8

Intellectual and industrial property rights

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.

This Regulation does not interfere with existing rights with regard to documents or information contained in documents by virtue of intellectual or industrial property legislation.

<TitreJust>Justification</TitreJust>

Intellectual property rights are effectively protected by other specific rules and do not have to be subject to this Regulation.

In this sense Art. 8 is superfluous. On the other hand, this provision as it is formulated, would prohibit a whole range of legitimate uses of documents.

</Amend><LANG:EN><Amend>(Amendment <NumAm>14</NumAm>
<TitreAm>Article 9

Registers and Information Officers</TitreAm>

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.**

1. Each institution shall **establish a register of its documents which is accessible to the public.**

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

¹ See "Decision of the European Parliament of 10th July 1997 on access to European Parliament", documents" Art. 3 par. 1, and "Decision of the Bureau of the European Parliament of 17th of April 1998" concerning the fee to be paid; see also US Freedom of Information Act (FOIA) as amended by the 1996 Electronic Freedom of Information Act (E-FOIA)

in the Register.

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

Wherever possible documents shall be made accessible via the Internet and other forms of computer telecommunications.

2. Categories of documents of the institutions which are to be considered as not falling under the exemption of informal information under Article 3 letter a) are listed in an Annex III to this Regulation 4

3. Each institution shall appoint an Information Officer responsible for the management and the keeping up to date of the Register as well as the processing of applications for access to documents.

4. The Information Officer shall make sure that correspondence coming from citizens of the Union is dealt with in accordance with Article 21 EC-Treaty.

5. The Information Officer shall see to it that in response to a request for information on a subject in which the institution concerned is involved and on which it possesses documents, these documents are made available to the applicant or the applicant is guided where to find these documents.

<TitreJust>Justification</TitreJust>

To be of use for the accessibility of documents, the content of the registers has to be defined in the Regulation. This only makes sense if the relevant documents can be identified by a citizen seeking information on a certain matter from the content of the register.

"Online access" would make it possible to have access to public documents without having to make a formal request. The 'US Electronic Freedom of Information Act Amendments of 1996' are an example.

All tasks concerning the keeping of the Register, processing of applications for access to documents as well as requests for information in general should be concentrated on a new function to be created within each institution: the "Information Officer". His responsibilities should comprise help and guidance for citizens seeking information.

<LANG:EN><Amend>(Amendment <NumAm>15</NumAm>)
<TitreAm>Article 10a (new)

International Agreements</TitreAm>

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

<TitreJust>Justification</TitreJust>

The purpose of the Regulation is to secure access to documents of the institutions within justifiable limits according to the right defined in Art. 255 TEC. Thus, the scope of already existing rights as defined under international law, as for example the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, signed in Aarhus, Denmark, on 25 June 1998, cannot and should not be limited by this Regulation.

<LANG:EN><Amend>(Amendment <NumAm>16</NumAm>)
<TitreAm>Article 10b (new)

Reports</TitreAm>

1. Each year, each institution shall submit to the Ombudsman 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.

2. The Ombudsman may submit to the institution concerned and the European Parliament an evaluation of these reports, along with any suggestions to the institution concerned.

<TitreJust>Justification</TitreJust>

<AmJust>Correct application of the exemptions specified for in this Regulation is essential in order to secure
It is therefore essential to monitor and assess the "exemption regime" as applied by each institution.

This follows the example of the US Freedom of Information Act (FOIA) as amended by the 1996 Electronic Freedom of Information Act (E-FOIA).

</AmJust>

<LANG:EN><Amend>(Amendment <NumAm>17</NumAm>
<TitreAm>Recital 8</TitreAm>

(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 specific rules applicable to access to documents **in certain specific areas where such rules are justified. Such rules should be listed in an Annex to the act to be adopted under Article 255(2).**

<TitreJust>Justification

This amendment corresponds to Amendment 3 to Article 2.

</TitreJust>

<AmJust><LANG:EN><Amend>(Amendment <NumAm>18</NumAm>
<TitreAm>Recital 9</TitreAm>

(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) The public interest and certain individual interests should be protected by way of a system of **exemptions.** The institutions should be entitled to protect **informal information** which **serves the provision of advice or the free exchange of ideas within the institutions.**

<TitreJust>Justification</TitreJust>

<AmJust>This amendment corresponds to Amendment 6 to Article 3.
</Amend></LANG:EN>

<LANG:EN><Amend>(Amendment <NumAm>19</NumAm>
<TitreAm>Recital 11</TitreAm>

(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) Each institution should **be bound to classify a document as non-public if it considers that access to it should be limited. Documents should be classified as such exclusively by reference to specific exemptions laid down in this Regulation when they are produced or received and at the latest when they are listed in the register.**

<TitreJust>Justification</TitreJust>

<AmJust>This amendment corresponds to Amendment 8 to Article 3 b (new).

<LANG:EN><Amend>(Amendment <NumAm>20</NumAm>
<TitreAm>Recital 12</TitreAm>

(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) It is neither the object nor the effect of this Regulation to amend existing national legislation on access to documents. By virtue of the principle of cooperation in good faith 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. *At the same time the institutions concerned should respect the right of Member States to grant a access in accordance with their national legislation to documents drawn up by them.*

<TitreJust>Justification:</TitreJust>

This amendment corresponds to Amendment 4 to Article 2 par. 3 (new).

<LANG:EN><Amend>(Amendment <NumAm>21</NumAm>)
<TitreAm>Recital 13</TitreAm>

(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 documents⁵, Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents⁶ and European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents⁷.

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

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 documents⁸, Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents⁹ and European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents⁹.

<TitreJust>Justification:</TitreJust>

This amendment follows the reasoning of the Court of Justice in Case C-58/94 Netherlands v. Council whereby specific rules on access to documents have whereby specific rules on access to documents be in line with general rules existing under Community law¹.

</AmJust>

¹ OJ C xx.

¹ to be drawn up

¹ to be drawn up

¹ to be drawn up

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

¹ OJ L 46, 18.2.1994, p.58; Decision as amended by Decision 96/567/EC, ECSC, Euratom (OJ L247, 28.9.1996, p.45)

¹ OJ L 263, 25.9.1997, p. 27.

¹ see footnote 10, page [16](#)

¹ see footnote 11, page [20](#)

¹ Judgment of the Court of Justice in Case C-58/92 Netherlands v. Council [1996] ECR I-2169, para 34 and 37