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REPORT

on the proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents
(COM(2000) 30 – C5-0057/2000 – 2000/0032(COD))

Part 1: Draft legislative Resolution

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Michael Cashman

Draftsman for opinion: Hanja Maij-Weggen, Committee on Constitutional Affairs *
(* enhanced Hughes Procedure)

Draftsman for opinion: Heidi Anneli Hautala, Committee on Legal Affairs and the Internal Market **
(** Hughes Procedure)

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

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(* enhanced Hughes Procedure)

(** Hughes Procedure)

Published separately:

EXPLANATORY STATEMENT ..... Part 2 - A5-0318/2000

PROCEDURAL PAGE

By letter of 28 January 2000 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 255(2) of the EC Treaty the proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (COM(2000) 30 - 2000/0032 (COD)).

At the sitting of 13 March 2000 the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, the Committee on Budgetary Control, the Committee on Legal Affairs and the Internal Market, the Committee on Constitutional Affairs, and the Committee on Petitions for their opinions (C5-0057/2000).

At the sitting of 7 July 2000 the President of Parliament announced that this report should be drawn up in accordance with the enhanced Hughes Procedure by the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the Committee on Constitutional Affairs and in accordance with the Hughes Procedure by the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the Committee on Legal Affairs and the Internal Market.

At the sitting of 8 September 2000 the President of Parliament announced that she had also referred this proposal to the Committee on Culture, Youth, Education, the Media and Sport for its opinion.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs confirmed Michael Cashman as rapporteur at its meeting of 21 March 2000.

The committee considered the Commission proposal and draft report at its meetings of 21 June, 12 July, 28 August, 18-19 September and 24 October 2000.

At the last meeting it adopted the draft legislative resolution by 28 votes to 4, with 2 abstentions.

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans and Bernd Posselt, vice-chairmen; Michael Cashman, rapporteur; Jan Andersson (for Margot Keßler), Marco Cappato, Carmen Cerdeira Morterero (for Gerhard Schmid), Charlotte Cederschiöld, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Giorgos Dimitrakopoulos (for Mary Elizabeth Banotti), Pernille Frahm, Daniel J. Hannan, Adeline Hazan, Jorge Salvador Hernández Mollar, Anna Karamanou, Ole Krarup, Alain Krivine (for Fodé Sylla), Baroness Sarah Ludford, Hartmut Nassauer, Elena Ornella Paciotti, Hubert Pirker, Martine Roure (for Sérgio Sousa Pinto), Ingo Schmitt (for Timothy Kirkhope), Patsy Sörensen, Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco (for Frank Vanhecke), Gianni Vattimo, Christian von Boetticher, and Jan-Kees Wiebenga; and Hanja Maij-Weggen (for Thierry Cornillet) and Heidi Anneli Hautala (for Alima Boumediene-Thiery) pursuant to Rule 153(2).

The Explanatory Statement will be published separately (Part 2 - A5-0318/2000).

The opinions of the Committee on Constitutional Affairs, the Committee on Legal Affairs and the Internal Market, the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, the Committee on Budgetary Control, the Committee on and the Committee on Culture, Youth, Education, the Media and Sport and the Committee on Petitions are attached.

The report was tabled on 27 October 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

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

The proposal is amended as follows:

Text proposed by the Commission [1]	Amendments by Parliament
(Amendment 1) Title of Regulation	
Proposal for REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL regarding access to ***European*** Parliament, Council and Commission documents	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL regarding public access to Parliament, Council and Commission documents ***and improving transparency in their working methods***.
Justification: *The title of the draft Regulation should refer to the overall aim which is to improve transparency of the institutions.*	
(Amendment 2) Recital 0 (new)	
	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
Justification: *A truly democratic debate cannot develop in the European Union without open institutions. To ensure such a debate is nevertheless important in order to gain trust and confidence,*	

[1] OJ C177, 27.06.2000, p.70.

especially among young people, who are the future of Europe.

(Amendment 3)
Recital 1a (new)

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".

Justification:

A reference to the Charter of Fundamental Rights which will be adopted before the end of the year confirms the importance of transparency and links with good administration.

(Amendment 4)
Recital 1b (new)

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; Article 2 also stipulates that the objectives of the Union shall be achieved while respecting the subsidiarity principle.

Justification:

This recital incorporates the proposals of the Standing Committee of Experts on International Immigration, Refugeee and Criminal law (Utrecht July 1999).

(Amendment 5)
Recital 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.

In the context of the European Union, Declaration 17 attached to 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 freedoms, and the rule of law on which the Union is founded as stated in Article 6 of the Treaty of the 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.

Justification:

Declaration 17 attached to the Maastricht Treaty is quoted as this emphasises the importance of transparency for the democratic nature of the institutions and a connection is made to Article 6 of the EU Treaty. The inportance of transparency in combating corruption should also be stated.

(Amendment 6)
Recital 2a (new)

Respecting the democratic principle foreseen in Article 6 of the EU Treaty, in exceptional cases where documents cannot be made public, Parliamentary scrutiny must be granted according to an interinstitutional agreement.

Justification:

The democratic principle is the justification for the parliamentary scrutiny foreseen in Articles 4b new and 7(3).

(Amendment 7)
Recital 2 b (new)

Openness and transparency are also means to overcome any problems that may be caused by cultural and linguistic differences among the Member States

Justification:

Cultural and lingustic differences between Member States have to be recognised.

Transparency can help to avoid problems arising from these differences.

(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) ***The present 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, the present 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 rules on modalities for access to documents.***

Justification:

The European Council's of Birmingham, Edinburgh and Copenhagen stressed the need to introduce greater transparency into the work of the Union institutions. This political impulsion is the source of the existing Code of Conduct and of recent improvements in the Internal Rules of the Commission and of the Council. This Regulation has to maintain this acquis giving to it a more solid legal basis.

(Amendment 9)
Recital 3a (new)

	The implementing rules on public access to documents should be drafted as clearly as possible.

Justification:

These rules are directed at a broad public that might be interested in requesting access to documents. It is therefore particularly important that the implementing rules are also clear and easy to understand for all possible users.

(Amendment 10)
Recital 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.	***In recognition of the need for further progress in the Union towards greater transparency, the Treaty of Amsterdam introduced Article 255 to the EC Treaty on the right of access to documents. Consistent with the principle of openness in Article 1 of the Treaty on European Union, t***he purpose of this Regulation ***which implements Article 255*** 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 EC Treaty.

Justification:

This Regulation builds on the progress that has already been made and in no circumstances should this Regulation be a step backwards.

(Amendment 11)
Recital 6a (new)

	Where bodies and agencies are created by the European Parliament, the Council and the Commission and those bodies are created by and under the responsibility of the institutions, then those bodies should, as regards access to documents, apply the principles in this Regulation. As a matter of good administration, the other

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

Justification:

Bodies and agencies created by the institutions should apply the principles in this Regulation to ensure that the institutions are not able to escape provisions of this Regulation by transferring responsibilities to the bodies and agencies created by them as this would undermine the effectiveness of Community law. As the other institutions are not mentioned in Article 255, this regulation does not impose an obligation on them to follow the principles in the Regulation, but they may do so as a matter of good administration.

(Amendment 12)
Recital 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.	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 ***must*** be extended to include all documents held by the European Parliament, the Council and the Commission.

Justification:

It is important that the Regulation states clearly that its provisions must apply to all documents held by the European Parliament, the Council and the Commission.

(Amendment 13)
Recital 7a (new)

	Consistent with Article 207 of the EC 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.

Justification:

Reference should be made to Article 207 of the EC Treaty and that greater access should at least be given to documents relating to a legislative procedure.

(Amendment 14)
Recital 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***.	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.***

Justification:

Where specific rules on access to documents are justified, they should be expressly listed in an Annex.

(Amendment 15)
Recital 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	***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 taking decisions on the disclosure of a document the need to protect some of the interest protected by the exceptions must be weighted against the interest to promote transparency and the public discussion.***

Justification:

All documents of the institutions should be accessible subject to limited exceptions. Although

there should be "space to think" internal documents should not be excluded from the scope of the Regulation. It is necessary to introduce a "harm test", that is when a body is considering access to documents, the interest to protect must be weighted against the interest for the public to have access to such documents.

(Amendment 16)
Recital 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*** where***by*** at the confirmatory stage no response ***is treated as a positive response***.	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 bring court proceedings or complaints to the Ombudsman.***

Justification

It is not necessary to refer to the existing practice as the Regulation can establish an improved procedure. A failure to reply to a confirmatory application should entitle the applicant to seek further remedies

(Amendment 17)
Recital 10a (new)

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

Justification

This amendment corresponds to Article 3a (new).

(Amendment 18)
Recital 11

Each institution ***should*** tak***e*** the measures necessary to inform the public about the new provisions in force***; f***urthermore, to make it easier for citizens to exercise their rights arising from this Regulation, each institution should ***provide access to*** a register of documents.	Each institution ***shall be responsible for*** tak***ing*** measures to inform the public about the new provisions in force. ***F***urthermore, 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 insitutions must be provided with adequate resources to enable them to implement the Regulation properly.***

Justification

There should be a positive obligation on the institutions to take measures to inform the public about the new provisions

(Amendment 19)
Recital 11 a (new)

	Each institution should encourage and educate the staff concerned to help and assist the citizens when they try to exercise their rights arising from this Regulation and should establish contact points. Each institution shall reorganise and simplify the internal procedures and methods for managing the work flow of documents.

Justification:

These rules are directed at a broad public that might be interested in requesting access to documents. It is therefore particularly important that the staff working at the institutions can help the citizens getting access to the documents. A first point of contact within the institutions should be identified for citizens. In order for the aims of this Regulation to be fulfilled the institutions need to improve their internal working methods.

(Amendment 20)
Recital 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.***	***Consistent with the principle of subsidiarity in Article 5 of the EC Treaty*** this Regulation ***does not*** amend ***or harmonise*** existing national legislation on access to documents. ***Consistent with*** the principle of loyalty which governs relations between the Community institutions and the Member States ***in Article 10 of the EC Treaty 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.***

Justification:

Member States and institutions should take the final decisions on applications received by them, while taking into account the opinion of the author of the documents.

(Amendment 21)
Recital 11a new

	The protection which citizens of the Union enjoy pursuant to international agreements should not be limited by the Union.

Justification:

This recital incorporates the proposals of the Standing Committee of Experts on International Immigration, Refugeee and Criminal law (Utrecht July 1999).

(Amendment 22)
Recital 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***	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 shall supplement this***

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[2] and European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents[3]	***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 documents ***as amended by the Council decision of 14 August 2000***[4], Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents[5] and European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents[6] ***which should therefore be repealed. The rules relating to the confidentiality of Schengen documents and the archives should also be repealed.***

Justification:

The specific rules adopted to implement the Regulation must be in conformity with the Regulation. The existing decisions on access to documents must be repealed as otherwise it will lead to a confusing situation for the citizens. The recent Council decision on security and defence documents must also be repealed. The rules on access to Schengen documents which have become part of the Community acquis must also be repealed. Also the rules on the institutions on the Community archives must be repealed as theywill no longer be necessary.

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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).

2 OJ L 46, 18.2.1994, p. 58; Decision as amended by Decision 96/567/EC, ECSC, Euratom (OJ L 247, 28.9.1996, p. 45).

3 OJ L 263, 25.9.1997, p. 27.

4 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).

5 OJ L 46, 18.2.1994, p. 58; Decision as amended by Decision 96/567/EC, ECSC, Euratom (OJ L 247, 28.9.1996, p. 45).

6 OJ L 263, 25.9.1997, p. 27.

(Amendment 23)
Heading (new)

CHAPTER I
GENERAL PRINCIPLES AND SCOPE

Justification:

This Regulation should be divided into chapters and sections for clarity.

(Amendment 24)
Art. 1a (new)

Purpose

1. ***The purpose of this Regulation which implements Article 255 is to give effect to 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.***
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.***
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.***

Justification

It is useful to introduce an article on the purpose of the Regulation. A first paragraph should point out that what follows is not "a gift" from the institutions to the citizen but simply the exercise of an obligation introduced into the Treaty establishing the European Community to take decisions in accordance with the democratic principles of openness and accountability,

as defined in Article 1 of the Treaty of the European Union.

(Amendment 25)
Article 1

Article 1 ***General principle and b****eneficiaries*	*Article 1* ***B****eneficiaries*
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 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.***

Justification:

It should be clearly stated that citizens have a right of access. Consistent with the existing rules, third country nationals not resident in the Union should be granted access to documents under the same conditions even though they have no enforceable right.

(Amendment 26)
Article 2

Article 2 ***Scope***	*Article 2* *Scope*
1. This Regulation shall apply to all documents ***held by the institutions, that is to say, documents*** drawn up by the***m*** 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.***	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. 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. In case of conflict, t***his Regulation ***takes precedence over existing Regulations adopted on the basis of European Union or Community Treaties, allowing a less favourable treatment for the citizens with regard to access and limits to access to documents.*** ***3. This Regulation shall not preclude the application of the specific rules in Annex I.***

Justification:

Articles 28 and 41 TEU expressly provide that the right of access applies to documents in the second and third pillar. Access to documents of third parties should not be limited to documents sent after the entry into force of this Regulation. Due to the fact that Article 255 of the Treaty has to be considered as a constitutional principle, (as it is for instance the case for Article 202 TCE) limits and rights established on the basis of this Article can not be modified by Regulations adopted on other legal basis in the European Union and Community Treaties (even if the Treaty does not foresee explicitly a hierarchy of norms).

(Amendment 27)
Article 2a (new)

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 a 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.

Justification:

Article 255 refers to a general right of access to documents of the institutions and does not make any reference to an "application" for documents. Access can be granted in other ways. The Regulation should be without prejudice to higher standards of access under national legislation. The purpose of this Regulation is to implement and define the limits of the citizens' right of access to documents. The European Parliament , as a body with power of scrutiny, cannot be subject to the same limitations. The scope of 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.

(Amendment 28)
Article 3

Definitions	*Definitions*
For the purposes of this Regulation:	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;	(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) ***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;	(b) "institutions" shall mean the European Parliament, the Council and the Commission ***as well as*** - ***Their internal and subsidiary bodies (such as Parliament Committees, Council Committees, Working Groups and Commission Directorates-General)*** - ***Agencies created by the institutions and accountable to the institutions, as listed in Annex II.***
(c) "European Parliament" shall mean Parliament bodies (and in particular the Bureau and the Conference of Presidents),Parliamentary Committees, the political groups and departments;	***Deleted.***

(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;	***Deleted.***
(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;	***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.	(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.	

Justification:

Documents must have an 'author' acting in an official capacity and responsible for the content and classification. Consistent with current practice, "internal documents" should not be excluded from the scope of the Regulation.

The "institutions" should include the internal and subsidiary bodies which must be defined in the internal rules of procedure of the institutions.

To ensure that the institutions do not escape their obligations by delegating powers to bodies and agencies, the principles in the Regulation should apply to those bodies which have been created by the institutions and for which they have responsibility. These agencies are defined in Annex II.

(Amendment 29)

Article 3a (new)

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 should classify the document as soon as the document is produced or received and must classify it 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 except in exceptional circumstances.

The classification must include a reference to the exception concerned.

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

3. At the time of an application for disclosure, the institution should 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.

Justification:

The principle should be that all documents of the institutions are public unless the author responsible classifies them as non-public at the time that the documents are produced. The classification should include the reasons based on the exceptions in Article 4 and the period of time for which the classification is valid, this may be by reference to a specific period of time, the phase of the procedure or a specific event. At the time of an application for a document on the register, if an exception applies, the institution must reassess whether the classification is correct. The exceptions on public access in Article 4 should only apply for a maximum of 30 years. This paragraph 4 is based on the current rules in Regulation 354/83.

(Amendment 30)
Article 4

Exceptions	***1.*** Exceptions
The institutions may refuse access to documents where disclosure could significantly undermine the protection of:	***Public access to documents may be limited on the following grounds:***
(a) ***the public interest and in particular:***	(a) ***access may be denied on grounds of public interest where disclosure could significantly undermine***
_ public security,	***- Public security,***
_ defence and international relations,	***- Monetary stability,***
_ relations between and/or with the Member States or Community or non-Community institutions,	***- defence and military matters***
_ financial or economic interests,	***- vital interest relating to the EU's international relations.***
_ 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:***	(b) ***access shall be denied where disclosure would be contrary to the protection, under law, of the right to privacy of an individual;***
_ 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.***	(c) ***access may also be denied on grounds of commercial secrecy where this outweighs the public and private interest in disclosure;***

Justification:

The list of exceptions proposed by the Commission would provide a justification for the exclusion of practically any document and the proposal does not distinguish between different kinds of presumptions for confidentiality. The application of an exception should be based on a comparing of the interests involved and not just a blank exception.

The exception concerning third party documents would undermine the whole idea about public access to documents and should therefore be deleted. This does not mean that there are no legitimated rights of protection but they have to be covered by the other exemptions.

No CFSP/ESDP documents should automatically be excluded from public access. Only those containing information that could risk lives, military operations or sensitive information with third countries, international organisations or negotiations, can be fully or partly, excluded from public access, after a case by case examination.

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

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.

Justification:

The institutions should not only take account of the public interest but also if applicable,the specific interest of the applicant.

(Amendment 32)

Article 4, paragraphs 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 Article 4.1, 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.

Justification:

Where part of the document is covered by an exception, then access must be granted to the remainder of the document. In certain circumstances, it may not be appropriate to disclose information identifying an individual official.

(Amendment 33)
Article 4a (new)

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

- the Regulation..... of the European Parliament and of the Council based on Article 286 when the data are treated in relation to activities totally or partially

founded on the European Community Treaty;

- the principles outlined in Annex III which shall be applicable in the absence of specific rules adopted on the basis of the Treaties.

Justification:

There are no clear rules or regulation on the right of access to personal data held by the institutions when they work in the framework of the second or third pillar.

(Amendment 34)
Article 4b new

Measures to be agreed by the institutions

In application of the present Regulation, within a period of one year, the institutions shall 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:

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

- ***treatment and protection of such documents, including very confidential documents***

- ***rules concerning the application of the 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 is 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 simplified qualified majority in accordance with Article 205(2) and in the European Parliament acting by a majority of the votes cast. The agreements may be modified at the request of one of the parties.

Justification:

An interinstitutional agreement on the classification of documents and disclosure of documents is necessary. This should include a system for resolving disputes concerning the classification of another institution. It should be clear that existing agreements may need to be modified, security gradings should only apply in limited circumstances and the institutions should be able to question the confidential nature of documents of other institutions (e.g. when they receive a request for the documents).

(Amendment 35)
Heading (new)

CHAPTER II

[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***

THIRD PARTIES AND MEMBER STATES

Justification:

This regulation should be divided into chapters and sections for clarity.

(Amendment 36)
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 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 should be disclosed, the institution shall immediately inform the third party or Member State of its 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 the right to seek interim measures from the

European Court of Justice.

Justification:

At the time that the Member State or third party sends a document to an institution, it should already indicate whether and which parts it considers can not be disclosed . The final decision should be taken by the institution which has received an application but it must give the Member State or third party the possibility of seeking interim measures from the European Court of Justice. The institution will decide whether a document can be disclosed, but it would be justified to treat documents from different bodies in a different manner and therefore guidelines should be agreed between the institutions.

(Amendment 37)
Article 4d (new)

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.

Justification:

The Regulation should not modify the national rules on access to documents, but the Member States must respect the spirit of loyal cooperation in Article 10 of the EC Treaty, particularly where the development of Community policy may be prejudiced.

(Amendment 38)
Heading (new)

CHAPTER III
ACCESS TO DOCUMENTS

Section 1 – Right of Access

Justification:

This Regulation should be divided into chapters and sections for clarity.

(Amendment 39)
Article 4e (new)

Publication of documents in the Official Journal

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

Justification:

Article 254 requires regulations, directives and decisions adopted under the co-decision procedure to be published in the Official Journal. Many other legislative documents are published in the Official Journal, but, consistent with Article 207, the institutions should be under an obligation to publish all "final" documents relating to legislative procedures.

(Amendment 40)
Article 5

Processing of initial applications	***Documents accessible on written application***
1. All applications for access to a document shall be made in writing in a sufficiently precise manner to	1. All applications for access to a document shall be made in writing ***in one of the official languages of the***

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.***	***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 ***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.	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 accepted transmit the documents within the same period.***
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.***	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. ***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.
	5. If the institution considers that the document may be disclosed within six months of receipt of the application, the institution must send the document to the applicant within two weeks after the date on which the document can be disclosed.

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.	***6.*** 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.
Failure to reply within the prescribed time-limit shall be treated as a negative response.	
	7. ***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.***

Justification:

If a system of classification is established, then, in the case of a negative response, the first response should state the reasons for refusal, the period of time for which the classification is valid and where the document has been published or is available from another body, the source from whom the applicant may be able to obtain the document.

The institution should also inform the applicant of his right to make a confirmatory application. Where the document is not currently public but where it will become public after a short period of time, for example, after being sent to the addressee, the institution should be required to send the document once it becomes public.

(Amendment 41)
Article 6

Processing of confirmatory applications; ***remedies***	*Processing of confirmatory applications*
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	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 accepted, transfer the documents to him in the same time period***. If the institution decides to maintain its refusal to grant access to the

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.	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.***	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 ***entitle the applicant to seek the remedies in Articles 9c.***

Justification:

The response should be provided within two weeks and if accepted the documents should be provided at the same time. A negative response should include the reasons for refusal and inform the applicant of the remedies available.

(Amendment 42)
Heading (new)

Section 2 – Exercise of right of access

Justification:

This Regulation should be divided into chapters and sections for clarity.

(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.	***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 ***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.***	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 if they are already available in that form, e.g. electronically or in an alternative format, (such as Braille, large print or tape).*** ***3. 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 under Article 4b.***

Justification:

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. Second part of the second

paragraph is moved to Article 4, paragraph 3.

(Amendment 44*)*

Article 8

Reproduction for commercial purposes or other forms of economic exploitation	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.	***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 their compliance with the applicable Union, national or international law relating to the protection of intellectual or industrial property rights.

Justification:

Legislation for the protection of industrial and intellectual property rights already exists and this Regulation should not change the existing rules. It will be the duty of the person disseminating the information to comply with the applicable legislation.

(Amendment 45)
Article 9

*Information **and registers***	*Information*
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.***	Each institution shall ***be responsible for informing*** the public of the rights they enjoy as a result of this Regulation ***and 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 and;*** d) ***the means of access to the register; and*** e) ***a code of conduct on transparency for officials***

Justification:

The institutions have a responsibility to inform the public of their rights and for providing the information such as the rules of procedures which will enable them to exercise their rights. The obligation to establish a register is now in Article 9a.

(Amendment 46)
Article 9a (new)

Registers

1. ***Within three months of the entry into force of the 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, 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 must at a minimum be included in the register are listed in Annex IV and include all documents created by that 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 2 above shall be made directly available from the entry into force of this Article.

Justification:

"On-line" access through a register would make it possible for citizens to have access without having to make a formal request. The register could therefore be an interface to the production and storage of documents of the institutions.

(Amendment 47)
Heading (new)

Section 3 – Information Officers.

Justification:

This Regulation should be divided into chapters and sections for clarity.

(Amendment 48)
Article 9b (new)

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 EC Treaty and providing assistance to citizens seeking further information on a subject in which the institution is involved.

2. In order to put into effect this Regulation, the institutions shall take all necessary steps and measures to meet the demands 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 defined in the internal rules of each Community institution or body.

Justification:

Decisions on confirmatory applications shall be taken in an independent manner by an official of an appropriately high rank. This official should have other duties in relation to the application of this Regulation by the institution, including dealing with disputes within the institution on the correct classification of documents. The internal rules should cover the qualifications, the appointment, dismissal, independence and the tasks, duties and powers of the Information Officer.

(Amendment 49)
Heading (new)

CHAPTER IV
REMEDIES AND REPORTS

Justification:

This Regulation should be divided into chapters and sections for clarity.

(Amendment 50)
Article 9c (new)

Remedies

1. ***Where an applicant receives a negative response to a confirmatory application, then, in accordance with Article 195 of the EC Treaty, the applicant may apply to the Ombudsman to examine whether a case of maladministration has occurred.***

2. ***Where an applicant receives a negative response to a confirmatory application, the applicant may in accordance with Article 230 , lodge an appeal 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 European Courts in relation to access to documents, in particular in relation to confidential documents and costs in transparency cases.***

Justification:

The Regulation should state clearly the remedies available to citizens. Appeals may be brought either by the party who has been refused access or by the party whose information is to be disclosed. The possibility of appeal to the ECJ should ensure that the system of

exceptions is not abused.

(Amendment 51)
Article 9d (new)

Reports

1. Within a period of three years 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.

Justification:

Reporting obligations should be included in the Regulation.

(Amendment 52)
Heading (new)

Transitional provisions

Justification:

This Regulation should be divided into chapters and sections for clarity.

(Amendment 53)
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].	***Deleted***

Justification:

Logically, the provisions on the entry into force of internal rules of procedure should follow the provisions on the entry into force of the Regulation.

(Amendment 54)
Article 11

Entry into force	*Entry into force*
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*.
This Regulation shall be binding in its entirety and directly applicable in all Member States.	This Regulation shall be binding in its entirety and directly applicable in all Member States.

Justification:

Any transitional provisions should be included in the relevant articles.

(Amendment 55)

Article 11a (new)

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].

Justification:

The internal rules of procedure should be adapted to conform to the Regulation.

(Amendment 56)
Article 11b (new)

From the date of the entry into force of the present 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 the Council decision of 14 August 2000[1],

b) Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents[2],

c) European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents[3].

(d) Decision of the Executive Committee of 14th December 1993 concerning the confidentiality of certain documents [SCH/Com-ex(93) 22 rev][4],

(e) Decision of the Executive Committee of 23rd June 1998 concerning the confidentiality of certain documents [SCH/Com-ex(98) 17][5]

(f) Council Regulation n° 354/83 of February concerning the opening to the public of the historical archives of the European Economic Community

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).
2 OJ L 46, 18.2.1994, p. 58; Decision as amended by Decision 96/567/EC, ECSC, Euratom (OJ L 247, 28.9.1996, p. 45).
3 OJ L 263, 25.9.1997, p. 27.
4 OJ.....22.9.2000
5 OJ....22.9.2000

and the European Atomic Energy Community[1].

Justification:

The existing rules must be repealed as otherwise the situation will be confusing for the citizens. The recent Council Decision on security and defence documents must also be repealed. The rules on access to Schengen documents which have become part of the Community acquis must also be repealed. Also the rules on the institutions on the Community archives must be repealed as they are no longer necessary.

(Amendment 57)
Article 11c new

In its capacity as the institution responsible for Europol, the Council will examine within a period of one year on the basis of a proposal presented by the Commission or by a Member State the necessary amendments to make Council Act of 3 November 1998 adopting rules on the confidentiality of Europol information[1] compatible with the principles in this Regulation.

Justification:

The rules on access to documents of Europol should also be made consistent with the Regulation.

(Amendment 58)
Annex I (new)

Specific Rules

Justification:

This list is to be defined in agreement with the Commission and Council on the basis of a case

[1] OJ.....
[1] OJ C 026 30/01/1999

by case examination[1].

(Amendment 59)
Annex II (new)

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

[1] *The Commission's non-exhaustive and indicative list suggests that the rules below are treated as special rules.*

1. *Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (Official Journal L 083, 27/03/1999 p. 0001 - 0009)*
2. *Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (Official Journal L 082, 22/03/1997 p. 0001 - 0016)*
3. *Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (Official Journal L 136, 31/05/1999 p. 0001 - 0007)*
4. *Commission Regulation (EC) No 2064/97 of 15 October 1997 establishing detailed arrangements for the implementation of Council Regulation (EEC) No 4253/88 as regards the financial control by Member States of operations co-financed by the Structural Funds (Official Journal L 290, 23/10/1997 p. 0001 - 0007)*
5. *Council Regulation (EC, Euratom) No 1026/1999 of 10 May 1999 determining the powers and obligations of agents authorised by the Commission to carry out controls and inspections of the Communities' own resources (Official Journal L 126, 20/05/1999 p. 0001 - 0003)*
6. *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. Commission Decision No 359/83/ECSC of 8 February 1983 concerning the opening to the public of the historical archives of the European Coal and Steel Community.*
7. *Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Official Journal L 281, 23/11/1995 p. 0031 - 0050)*

[8. Commission Decision 94/810/ECSC, EC of 12 December 1994 on the terms of reference of hearing officers in competition procedures before the Commission.]

[9. Rules on public access to environmental information of the institutions]

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

Justification:

Bodies and agencies created by the institutions should not be exempt from the application of the Regulation. Although they are not specifically mentioned in Article 255, it would undermine the effectiveness of the Treaty provision if they are not included.

(Amendment 60)
Annex III

Access to personal data foreseen in art. 4a

1. Data subjects must be informed of the collection of personal data concerning them and of their eventual processing, unless the provision of that information is impossible or involve 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].

Justification:

See Amendment by Elena Ornella Paciotti (Article 4a new).

(Amendment 61)
Annex IV

Documents to be published in the Official Journal

Final Acts

(a) Regulations, directives and decision 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 Coreper 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 and one or more States or international organisations sets up a body vested with powers of decision, the Council shall decide, when such an agreement is concluded, whether decisions to be taken by that body should be published in the Official Journal.

Justification:

This list is based on the Council's rules of procedure.

(Amendment 62)
Annex V

Documents to be included at a minimum in the register

- all documents created in the course of a procedure for the adoption of legally binding measures

- all documents relating to the formulation and adoption of policy or strategy

- all documents relating to the implementation of Union law

Justification:

Categories of documents which must be accessible through the register should be listed in an Annex.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (COM(2000) 30 – C5-0057/2000 – 2000/0032(COD))

(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and to the Council (COM(2000) 30[1]),

– having regard to Article 251(2) of the EC Treaty and Article 255(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to the European Parliament (C5-0057/2000),

– having regard to Rule 67 of its Rules of Procedure,

– having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, the Committee on Budgetary Control, the Committee on Legal Affairs and the Internal Market,the Committee on Culture, Youth, Education, the Media and Sport, the Committee on Constitutional Affairs and the Committee on Petitions (A5-0318/2000),

1. Approves the Commission proposal as amended;

2. Asks to be consulted again should the Commission intend to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

[1] OJ C177, 27.06.2000, p.70.

13 October 2000

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS, HUMAN RIGHTS, COMMON SECURITY AND DEFENCE POLICY

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents
(COM(2000) 30 – C5-0057/2000 – 2000/0032(COD))

Draftsman: Cecilia Malmström

PROCEDURE

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy appointed Cecilia Malmström draftsman at its meeting of 12 July 2000.

It considered the draft opinion at its meetings of 19 September and 10 October 2000.

At the latter meeting it adopted the amendments below unanimously.

The following were present for the vote: Elmar Brok, chairman; Baroness Nicholson of Winterbourne and Catherine Lalumière, vice-chairmen; Cecilia Malmström, draftsman; Sir Robert Atkins (for Silvio Berlusconi), Alexandros Baltas, Bastiaan Belder, Emma Bonino, Andre Brie, María Carrilho (for Rosa M. Díez González), Gunilla Carlsson, Daniel Marc Cohn-Bendit, Ozan Ceyhun (for Elisabeth Schroedter pursuant to Rule 153(2)), Andrew Nicholas Duff (for Francesco Rutelli), Olivier Dupuis (for Karel C.C. Dillen), Pere Esteve, Giovanni Claudio Fava (for Sami Naïr), Pernille Frahm (for Efstratios Korakas), Michael Gahler, Jas Gawronski, Vitalino Gemelli (for The Lord Bethell), Alfred Gomolka, Bertel Haarder, Klaus Hänsch, Magdalene Hoff, Alain Lamassoure, Pedro Marset Campos, Linda McAvan, Emilio Menéndez del Valle, Philippe Morillon, Pasqualina Napoletano, Raimon Obiols i Germa, Arie M. Oostlander, Reino Kalervo Paasilinna (for Mário Soares), Hans-Gert Poettering, Jacques F. Poos, Luís Queiró, Mechtild Rothe (for Jan Marinus Wiersma), Lennart Sacrédeus (for José Ignacio Salafranca Sánchez-Neyra), Tokia Saïfi (for Jacques Santer), Jannis Sakellariou, Jürgen Schröder, Ioannis Souladakis, Francesco Enrico Speroni, Ursula Stenzel, Hannes Swoboda, Freddy Thielemans, Gary Titley, Johan Van Hecke, Geoffrey Van Orden, Matti Wuori, Christos Zacharakis.

SHORT JUSTIFICATION

Introduction

The activities of public life are of concern to all citizens. This is true both on local and regional level, as well as on the national and European levels. Access to documents, providing insight into the work of public institutions, is one of the cornerstones of a democratic society. By ensuring public scrutiny, openness and transparency in the work of the public authorities can be assured. It is only by giving citizens the right of participation in public life, that a free debate can be fuelled and flourish.

Research have shown a clear relation between an open administration and a low level of corruption. The knowledge that documents and correspondence can be checked can prevent officials and politicians from abusing their power and influence, and thus contributes to decreased corruption and mismanagement. Transparency in the public institutions must be considered as a necessary means to guarantee rule of law, efficiency and a democratic debate, also on the European level.

Increased competencies and a new role for the European Union has increased public interest in the European integration process during the past decade. The recent development has also raised critical voices against the EU administration, where many institutions lack comprehensive rules on access to documents, as well as a working culture signified by transparency. There is a need for a regulation providing clear and comprehensive rules for access to documents, making openness the general rule – and secrecy an exception. Such a regulation will also play an important role in the current reform of the European administration, bringing it closer to its citizens.

The legal base

The Amsterdam Treaty has first of all amended the second paragraph of Article 1 of the TEU to point out that Union decisions must be taken not only as closely as possible to the citizen but also as openly as possible. Furthermore, *a new Article 255 has been added to the TEC establishing the right of access of Union citizens and of natural or legal persons residing in it, to EP, Council and Commission documents*. It is up to the Council to determine, within a period of two years and in codecision with the EP, the general principles and limits on grounds of public or private interest governing this right of access, whilst each Institution will establish in its own rules of procedure specific provisions regarding access to its documents. To this respect, a Declaration to the Final Act on Article 255 of the TEC allows the Member States to request the Commission or the Council not to communicate to third parties a document originating from that state without its prior agreement.

The introduction of transparency and openness in the procedures of the Institutions as principles of the European Union, as well as the inclusion in the Treaty of the principle of access to the Institutions' documents undoubtedly constitute important steps towards greater openness. It is also a step in the right direction that the Council, in codecision with the EP, is to establish the general principles of and limits on this right of access. Nevertheless, it is

regrettable that the implementing measures are left to the rules of procedure of the Institutions, something which the EP explicitly opposes.

It is very important that the new regulation will be applied by all European institutions as a matter of good administration, even though article 255 TEC only provides a legal base to cover the Commission, Council and Parliament. In order to ensure the right of access to documents held by all Community institutions, the Commission should be asked to table a proposal for an additional regulation, based on article 308 TEU.

The Commission's Proposal

Following the Commission's proposal, the Regulation will apply only to documents of the European Parliament, the Council and the Commission. *The legislation will cover all documents held by the three institutions.* This widening in the scope of the access system is a major step forward compared to the current system, which only covers documents produced by the institutions. However, it is understood that access to a document received from a third party will not be granted if the document is covered by one of the exceptions provided for in Article 4. Where there is some doubt on this, the institution will consult the author of the document first, although it reserves the right, if no reply is forthcoming, to take the final decision on whether to allow access to the document or not. Access to documents from third parties will be limited to those sent to the institution after the date of entry into application of this Regulation.

The term "document" is defined as any form of content irrespective of the medium on which it is carried. *It will cover only administrative documents*, i.e. any document on a topic which falls within the institution's remit, excluding documents expressing individual opinions or reflecting free and frank discussions or the provision of advice as part of internal consultations and deliberations, as well as informal messages such as e-mail messages which can be considered the equivalent of telephone conversations.

Since the main task of the Committee on Foreign Affairs is to concentrate on public access to documents related to the Common Foreign and Security Policy, the Rapporteur's general reactions to the proposal are described in the justifications of the proposed amendments.

Scope of regulation within the CSFP field

Articles 28(1) of the Treaty on European Union expressly provide that the right of access also applies to documents relating to the common foreign and security policy. Not surprisingly then, in the case T-14/98 Hautala vs. Council, judgement of 19th of July 1999, the Court of first instance accepted that documents related to security and foreign affairs issues also fall under the general scope of the access rules and were not as a category excluded on public interest ground.

The decision taken by the Council on 14 August 2000, excluding all ESDP documents from the 1993 decision on public access, is thus unacceptable. The European Parliament resolution on EU external action of 6 September 2000 deplores this decision.
The Commission's proposal includes a number of exceptions to the right of access to documents based on a "harm test". This means that access to documents will be granted

unless disclosure might seriously harm certain specific interests, which are spelled out in Article 4. As far as CFSP is concerned, this article states that *the institutions shall refuse access to documents where disclosure could seriously undermine the protection of the public interest and in particular defence and international relations, as well as confidentiality as requested by the third party that supplied the document or the information or as required by the legislation of the Member State.*

All national legislation in the field apply limitations on access to documents related to foreign and security policy. This kind of restrictions are necessary also in terms of the European Security and Defence Policy, and should be laid down as clear and detailed exceptions to the principle of public access. By allowing institutions to limit access to documents on the grounds of defence and military matters or vital interests relating to the EU's international relations, the necessary confidentiality, as that requested by NATO, can be ensured. Contrary to the recent decision taken by the Council, this exception would allow access to documents related to non-military crisis management. All requests for access to documents, irrespective of the document's classification, should be handled case-by-case.

Unfortunately, *the Commission's proposal does not deal with confidentiality.* Even worse, the Council has recently and unilaterally reacting by producing a first Decision of the Secretary General of the Council/ High Representative for the CFSP of 27 July 2000 on measures for the protection of classified information applicable to the General Secretariat of the Council A second Council Decision on public access to Council documents was also issued on 14 August. It is true that theses two Decisions refer to the Council's Rules of Procedure. Nevertheless, it is obvious that these two extemporary Decisions neither could them escape to the provisions of Article 255 TEC -implying codecision- nor could them unilaterally and "ex ante" affect the scope of the forthcoming Regulation under discussion. It is then indispensable to find as soon as possible a negotiated solution with the Council, in the framework of the interinstitutional dialogue which takes places regularly between the two institutions, and before the deadline to refer the matter to the Court of Justice expires on 23 October.

Parliamentary scrutiny of ESDP documents and control mechanisms

In its recent resolution of 6 September on EU external action priorities the EP has urged the Council to address matters relating to parliamentary scrutiny of the European security and defence policy (ESDP) and deplored the decision by the Council to exclude ESDP documents from application of the Council's decision on access to documents. This necessary parliamentary scrutiny of the documents classified as secrets and excluded from public access could be carried out by one of the following "ad hoc" organs:

- The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy as a whole;
- The Enlarged Bureau of this Committee;
- The "ad hoc" Standing Delegation for the relations with the NATO-Parliamentary Assembly actually being setting up within the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy.
- A Selected Committee of 5 up to 7 EP Members of the most concerned Committees (namely AFET, LIBE and CONST). Alternatively, the leaders of the political groups could form this committee.

Registers

The Commission's proposal indicates that to make it easier for citizens to exercise their rights arising from this Regulation, each institution shall provide access to a register of documents.

All documents held by an institution should be included in the register. This also applies to classified documents, to which access may on certain grounds be denied. Being able to access a public register covering all documents, citizens can get a clear picture of an institution's activities, despite the fact that not all documents are disclosed.

Administration of requests

Requests for documents should be handled speedily by the institutions, within no more than two weeks. For all negative replies to requests, the institution must give reasons for the denial of access. The citizen should also be informed on how to ask for reconsideration of the decision and other remedies available.

The institutions need to make further preparations for the implementation of the new regulation. The number of requests for access, resulting from the new regulation, may increase substantially, no doubt leading to a heavier workload for many of the institutions' staff. In this respect, it is very important to get support for the principle of public access among the officials dealing with public access. "Transparency training" schemes should be organised for all civil servants dealing with access to documents, providing education about the practical consequences of the regulation, as well as the ideas behind it. This can also lead to a more effective administration of requests and improved protection of the legal rights of the individual. Building new bureaucracies only to handle requests for documents should be avoided to the greatest possible extent.

The European institutions are unfamiliar to most citizens. Therefore it is important that all officials are service-minded and encouraged to assist citizens in how and where requests for access to documents can be made. The Ombudsman's Code of Good Administrative Behaviour provides comprehensive recommendations to the institutions in this respect.

Conclusions and Proposals

Openness and maximum transparency also in CFSP matters must be not the exception, but the main concern of the proposed Regulation. The right of public access also applies to documents relating to CFSP.

The derogation to the above mentioned general principle provided for in Article 4 in order to limit access to documents where disclosure could significantly undermine the protection of the public interest on defence and international relations should be interpreted in a very restricted way. This derogation is not to be applied to the CFSP issues as a block in any case. Only those documents, whose disclosure could harm military operations, risk human lives or affect vital interest of EU's international relations (sensitive information concerning relations with third countries, international organisations, negotiations, etc) could be excluded from

public access.In that case, the institution refusing to grant access to the document requested shall state the grounds for its refusal, provide individual proof and inform the applicant of the remedies open to him. Each application should be handled case by case.

The public register of documents kept in each institution should contain references to all documents held, including classified information. In case of classified documents, the grounds for refusal should be mentioned.

Officials dealing with access to documents should undergo special "Transparency Training", providing for increased understanding of the new regulation. The institutions must also ensure that all officials are able to inform citizens on how and where to request access to documents.

Among the current existing possibilities the most convenient way of assuring the necessary parliamentary scrutiny of the CFSP classified documents excluded from public access, could be through the "ad hoc" Standing Delegation for the relations with the NATO-Parliamentary Assembly directly answerable before the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy as well as the Plenary Sitting.

Nevertheless, should a similar parliamentary framework were to be established in order to guarantee the parliamentary scrutiny of all classified documents excluded from public access, the best formula could be by the above mentioned Select Committee of 5 up to 7 EP Members of the most concerned Committees, or the leaders of the political groups. This Select Committee would be then directly answerable to the Plenary Sitting.

AMENDMENTS

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission[1]	Amendments by Parliament

(Amendment 1)
Recital 0 (new)

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.

Justification:

A truly democratic debate cannot develop in the European Union without open institutions. To ensure such a debate is nevertheless important in order to gain trust and confidence, especially among young people, who are the future of Europe.

(Amendment 2)
Recital 3 a (new)

The rules on public access to documents should be drafted as clearly as possible. They should outline the limits of access as well as the procedure for complaints.

Justification:

These rules are directed at a broad public that might be interested in requesting access to documents. It is therefore particularly important that it is clear and easy to understand for all possible users which rights they have and how they could possibly enforce those rights.

(Amendment 3)

[1] OJ C 177, 27.06.2000, p. 70

Recital 10

10. In order to ensure that the right of access is fully observed, the present two-stage of 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, the present two-stage of administrative procedure, with the possibility of court proceedings or complaints to the Ombudsman, should be maintained, ***delete the rest***

Justification:

A failure to reply should never be treated as a positive decision since that could harm the interests that are protected according Article 4 of this Regulation.

(Amendment 4)
Recital 11 a (new)

	Each institution should encourage and educate the staff concerned to help and assist the citizens when they try to exercise their rights araising from this Regulation.

Justification:

These rules are directed at a broad public that might be interested in requesting access to documents. It is therefore particularly important that the staff working at the institutions can help the citizens getting access to the documents.

(Amendment 5)
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. This Regulation ***does not*** amend existing national legislation on access to documents. ***Consistent with*** the principle of loyalty which governs relations between the Community institutions and the Member States ***in Article 10 of the EC Treaty and with Declaration 35 attached to the Treaty on European Union 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.

Justification:

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

(Amendment 6)
Article 3

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

Justification:

All three institutions and their internal organs should be covered, but no descriptive definition is necessary.

(Amendment 7)
Article 5.5 (new)

	5. 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.

Justification:

The introduction of coherent internal procedures and, in particular, of a comprehensive register of documents by each institution, would significantly reduce the time needed for processing requests.

(Amendment 8)
Article 6

Processing of confirmatory applications; remedies	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.	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 ***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.***	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.

Justification:

The one-month time-limit 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, 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 it it should not be foreseen in a regulation as an alternative reaction of an application. 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. A failure to reply should never be treated as a positive decision since that could harm the interests that are protected according to Article 4 of this Regulation.

(Amendment 9)
Article 7.3 (new)

3. Parliamentary scrutiny of all documents excluded from public access should be assured by regularly informing the Committees involved in closed session, the enlarged bureau of those committees, or a Select Committee according to the classification and the topic of the documents concerned.

Justification:

The Parliamentary scrutiny should be assured at different levels according to the nature of the document and its classification.

(Amendment 10)
Article 7.4 (new)

4. An edited version of the requested document shall be provided if part of the document is covered by one of the exceptions in article 4.1. If a requested document is covered by article 4.2 a summary of its factual content shall in any case be provided.

Justification:

In cases where it is impossible to remove traces to indiviual officials by editing a document, the institution shall at least provide a summary of its factual content.

(Amendment 11)
Article 8

8. 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.***	8. Reproduction for commercial ***gain This regulation does not interfere with existing rights with regard to documents or information contained in documents which the institutions have received by third parties by virtue of intellectual or industrial property legislation.***

Justification:

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.

(Amendment 12)
Article 9

9. 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***.***	9. Each institution shall ***keep a register of all documents drawn up, received and sent by the institution. Documents shall be entered into the register at the time of their completion or reception. The register shall be easily accessible to all citizens and specify any classification of confidentiality of each document.***

Justification:

It is essential to regulate in a clear manner the time at which a document is entered into the register.
16 October 2000

OPINION OF THE COMMITTEE ON BUDGETARY CONTROL

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for a regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents
(COM(2000) 30 final/2 – C5-0057/2000 – 2000/0032(COD))

Draftsman: Diemut R. Theato

PROCEDURE

The Committee on Budgetary Control appointed Diemut R. Theato draftsman at its meeting of 1 September 2000.

It considered the draft opinion at its meetings of 19 September 2000 and 11 October 2000.

At the last meeting it adopted the amendments below unanimously.

The following were present for the vote: Diemut R. Theato chairman and draftsman; Herbert Bösch vice-chairman; Lousewies van der Laan, vice-chairman; Freddy Blak, vice-chairman; Mogens N.J. Camre (for Isabelle Caullery), Bert Doorn (for Raffaele Costa), Anne Ferreira, Salvador Garriga Polledo (for Thierry B. Jean-Pierre), Christopher Heaton-Harris, Helmut Kuhne, Brigitte Langenhagen, Eluned Morgan, Juan Andrés Naranjo Escobar (for José Javier Pomés Ruiz pursuant to Rule 153(2)), Heide Rühle (for Bart Staes), Esko Olavi Seppänen (for Marianne Eriksson), Gabriele Stauner, Claude Turmes, Rijk van Dam, Michiel van Hulten and Kyösti Tapio Virrankoski (for Antonio Di Pietro).

SHORT JUSTIFICATION

The subject of this opinion is a Commission proposal for a regulation[1] based on Article 255 of the EC Treaty. The article in question, which was introduced by the Amsterdam Treaty, guarantees citizens of the Union the right of access to European Parliament, Council and Commission documents. It requires the institutions, using the codecision procedure, to lay down general principles and limits on grounds of public or private interest governing this right of access.

Your draftsman wishes to emphasise in this connection that the principle of openness expressly enshrined in this way in Article 255 as well as in other provisions of the Treaties is the essential precondition for democratic control and participation of citizens in the decision-making process. It enables the administration to enjoy greater legitimacy and to be more effective and closer to the citizen, and plays a vital part in protecting against the arbitrary use of and the abuse of power.

Your draftsman clearly recognises that it is necessary for certain documents to remain confidential and that access by the public to such documents may consequently not be permitted. However, there are already rules governing this in the relevant Community legislation.

It therefore seems inappropriate, in addition to the existing provisions, to lay down a whole list of general exceptions, which, moreover, under the Commission proposal, would allow a great deal of room for discretion. This would inevitably lead to uncertainty and disputes.

Providing citizens with effective assistance in exercising their rights

For the rest, the amendments proposed by your draftsman are intended to make it easier for citizens of the Union to exercise their rights in practice. The fact is that the majority of those concerned find obtaining access to EU institutions and documents a relatively difficult process.

Particular efforts consequently need to be made to remove both supposed and actual obstacles. It is therefore proposed that each institution should establish a **contact point**, giving the names of persons to contact who can advise citizens and provide explanatory help.

It is also important to provide expressly that applications for documents may be made in **any of the 11 official languages** and that the institutions' replies must be given in the language chosen by the applicant.

[1] COM(2000) 30 final/2 of 21 February 2000

AMENDMENTS

The Committee on Budgetary Control calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission[1]	Amendments by Parliament
(Amendment 1) 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) Openness ***is the essential precondition for democratic control and participation of citizens in the decision-making process. It enables the administration to enjoy greater legitimacy and to be more effective and closer to the citizen, and plays a vital part in protecting against the arbitrary use of and the abuse of power and against corruption and fraud.***
Justification: *The fundamental importance of openness for democracy needs to be emphasised more clearly.*	
(Amendment 2) Recital 9	
(9) The public interest and certain ***individual*** interests ***should*** be protected ***by way of a system of exceptions***.	(9) ***In principle, all the documents of the institutions should be made public. However,*** the public interest and certain ***private*** interests ***must*** be protected.
Examples of these interests should be given in each case so that the system may be as transparent as possible.	***Access to documents may be restricted or refused where the protection of confidentiality is laid down in provisions of the Treaties.***
The institutions should also be entitled to protect their internal documents which express individual opinions or reflect free	***Informal*** documents which express individual opinions or reflect free and frank discussions ***may be excluded from the scope***

[1] OJ C .

and frank discussions ***and provision of advice as part of internal*** consultations and deliberations.	***of the Regulation. However, internal documents relating to*** consultations and deliberations ***fall within the scope of the Directive and may be disclosed.***

(Amendment 3)
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) Each institution ***shall 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 ***and establish a contact point.***

Justification:

The institutions should not only provide a register but should also provide explanatory help and contact points to advise citizens.

(Amendment 4)
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) It is neither the object nor the effect of this regulation to amend existing national legislation on access to documents***;*** it is clear that, by virtue of the principle of loyalty ***towards the citizens of Europe, this regulation cannot be used to limit the rights of access to information in Member States where national legislation would have permitted such access.***

Justification:

Some Member States' control mechanisms are based on the principle of transparency; if this

regulation reduced the possibilities of public control this might have a negative impact on democratic accountability as well as the fight against fraud. 85% of the budget is still managed by the Member States and it is important that the control of this expenditure is not reduced. This amendment would not mean that all documents sent to these Member States would be public, since even the most transparent rules existing today allow for confidentiality when needed.

(Amendment 5)
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 [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.	(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 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.

Justification:

The reference in recital 13 to the non-applicability of the Regulation in the absence of implementation provisions does not correctly reflect the legal nature and status of a Regulation under European law.

(Amendment 6)
Article 1

General principle and beneficiaries	*General principle**s** 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.***	***1.*** Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right ***of*** access to the documents of the institutions within the meaning of this Regulation, without having to cite reasons for their interest. ***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.*** ***2. Access may be denied where disclosure would be contrary to the confidentiality laid down in the Treaties .*** ***Access may be denied where disclosure would be contrary to:*** ***(a) the protection of an individual's right to privacy;*** ***(b) the public interest whenever disclosure would significantly undermine*** ***- public security,*** ***- monetary stability,*** ***- legal proceedings,*** ***presupposing that the interest in disclosure is not greater than that in confidentiality;*** ***(c) commercial secrecy where this outweighs the public and private interest in disclosure.*** ***3. Access may be denied in the case of documents which have been forwarded to the Institutions on condition that their confidentiality is protected and without there being a legal requirement for the documents to be forwarded. This exception shall not, however, apply if the documents have been forwarded with the intention of***

	influencing the legislative process.
	4. These provisions shall not obstruct national rules providing easier access.

(Amendment 7)
Article 2

Scope	*Scope **of application***
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.***	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 ***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 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.

Justification:

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 limited 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 interests of the citizens of its Member States'.

(Amendment 8)
Article 3

Definitions	*Definitions*
For the purposes of this Regulation:	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;***	(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);
(b) ***"institutions" shall mean the European Parliament, the Council and the Commission***;	(b) ***'documents held by the institutions' shall comprise the documents produced or considered by the European Parliament, the Council and the Commission or by the subsidiary organs of the said institutions if the bodies in question were set up by those institutions or if the said institutions participate in their functioning.***
(c) "European Parliament" shall mean Parliament bodies (and in particular the Bureau and the Conference of Presidents), Parliamentary Committees, the political groups and departments;	***(c) Delete***
(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;	***(d) Delete***
(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;	***(e) Delete***
(f) "third party" shall mean any natural or legal person, or any entity outside the	***(f) Delete***

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.

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.

Justification:

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.

(Amendment 9)
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.

Processing of initial applications

1. All applications for access to a document shall be made in writing ***in one of the official languages of the Community*** 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 a month of registration of the application, the institution shall inform the

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.	applicant, in a written and reasoned reply, of the outcome of the application. ***The reply shall be given in the language in which the application was made.***
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.***	3. Where the institution gives a negative reply to the applicant, ***in relation to all or part of the document, the institution shall state the reasons for its refusal based on the exceptions defined in this Regulation, the period of time or the procedural steps during which the documents will remain non-public, and, where relevant, the source from which the applicant may obtain the document.***
	3a. If the document becomes public within six months of receipt of the application, the institution must send the document to the applicant within one month of the date on which the document is declassified.
	3b. Where the institution gives a negative reply because part of the document is covered by any of the exceptions provided for in this Regulation, an edited version of the document shall be provided.
	3c. ***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.
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.	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.	

Justification:

Citizens must receive the documents at the earliest stage possible. If a system of classification of non-public documents is established, then, in the case of a negative response, the first

response should state the reasons for refusal, the period of time for which the classification as non-public is valid and where the document has been published or is available from another body, the source from whom the applicant may be able to obtain the document.

Where part of the document is covered by an exception, then access must be granted to the remainder of the document. The institution should also inform the applicant of his right to make a confirmatory application. However, failure to do so should not be deemed to be a withdrawal. Where the document is not currently public but where it will become public after a short period of time, the institution should be required to send the document once it becomes public.

(Amendment 10)
Article 6

Processing of confirmatory applications; remedies	*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.	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 ***one month***, provided that the applicant is notified in advance and that detailed reasons are given.	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.
Failure to reply within the prescribed time-limit shall be treated as a positive decision.	

Justification:

The one-month time-limits for reply by the institutions cannot be considered appropriate for a modern and efficient administration. 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 .

(Amendment 11)
Article 6a (new)

Time limits

All documents not linked to exceptions mentioned in Article 4 b) shall be made public after 15 years unless vital public interest is justifying a prolongation. With the exception of personal medical files, no document may be kept confidential for more than 50 years.

Justification:

For the purpose of research it is logical to put time limits on decisions to refuse access. Knowing that documents one day will become public will also have a pre-emptive controlling effect.

(Amendment 12)
Article 7

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

Justification:

The amendment suggests that documents shall be made available in formats accessible to all citizens, including blind and partially sighted people.

(Amendment 13)

Article 9

Information and registers	***Registers and information***
	1. 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. The register shall be accessible via the internet. Furthermore, to make it easier for citizens to exercise their rights arising from this Regulation, each institution shall establish a contact point.
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.***	***2.*** 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).***

Justification:

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 any document, regardless of classification.

11 October 2000

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for an European Parliament and Council regulation regarding public access to European Parliament, Council and Commission documents
(COM(2000) 30 – C5-0057/2000 – 2000/0032(COD))

Draftsman: Heidi Anneli Hautala

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Heidi Anneli Hautala draftsman at its meeting of 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, vide-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.

SHORT JUSTIFICATION

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 equal 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 draftsperson has come to the conclusion that a Regulation would best meet the basic requirements set for an EU law on access to documents. Your draftsperson 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[1], 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[2]: 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

[1] See, in particular, the First Protocol to the Convention and more particularly Article 3 thereof.

[2] 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.

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 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 draftsperson 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 draftsperson 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 draftsperson 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*.[1]

[1] 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).

AMENDMENTS

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

Text proposed by the Commission[1]	Amendments by Parliament
(Amendment 1) 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,***
Justification: *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 citizen's 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.*	

[1] OJ C .

(Amendment 2)
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***

Justification:

See justification amendment 1.

(Amendment 3)

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,***

Justification:

See justification amendment 1.

(Amendment 4)
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***

Justification:

See justification amendment 1.

(Amendment 5)
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,***

Justification:

See justification amendment 1.

(Amendment 6)
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,***

Justification:

See justification amendment 1.

(Amendment 7)
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,***

Justification:

See justification amendment 1.

(Amendment 8)
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,***

Justification:

See justification amendment 1.

(Amendment 9)
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,***

Justification:

See justification amendment 1.

(Amendment 10)
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,***

Justification:

See justification amendment 1.

(Amendment 11)
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,***

Justification:

See justification amendment 1.

(Amendment 12)
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,***

Justification:

See justification amendment 1.

(Amendment 13)
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	(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

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 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.	Council Decision 93/731/EC of 20 December 1993 on public access to Council 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.

Justification:

See justification amendment 1.

(Amendment 14)
Article 2

Scope	Scope ***of application***
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, ***whether*** drawn up by them or received from third parties.
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***.	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.

Justification:

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”.

(Amendment 15)

Article 3

Definitions	Definitions
For the purposes of this Regulation:	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;***	(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) ***which relates to the exercise of public powers or functions***;
(b) "institutions" shall mean the European Parliament, the Council and the Commission;	(b) "institutions" shall mean the European Parliament, the Council and the Commission ***and bodies and institutions subordinate to them***;
(c) ***"European Parliament" shall mean Parliament bodies (and in particular the Bureau and the Conference of Presidents), Parliamentary Committees, the political groups and departments;***	(c) ***Delete***
(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;***	(d) ***Delete***
(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;***	(e) ***Delete***
(f) ***"third party" shall mean any natural or legal person, or any entity outside the institution, including the Member States,***	(f) ***Delete***

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.	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.

Justification:

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.

(Amendment 16)

Article 4.1

Exceptions	Exceptions
The institutions shall refuse access to documents where disclosure could significantly undermine the protection of:	***1. Public access to documents may be limited on the following grounds:***
(a) the public interest and in particular:	
_ public security,	(a) ***access shall be denied where disclosure would be contrary to the protection, under law, of the right to privacy of an individual;***
_ 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:	(b) ***access may be denied on grounds of public interest where disclosure could significantly undermine***
_ personnel files,	- ***public security,***
_ information, opinions and assessments given in confidence with a view to	- ***monetary stability,***

recruitments or appointments,	***- legal proceedings,***
_ 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;	***presupposing that the interest in disclosure is not greater than that in confidentiality.***
(c) commercial and industrial secrecy or the economic interests of a specific natural or legal person and in particular:	***(c) access may also be denied on grounds of commercial secrecy where this outweighs the public and private interest in disclosure.***
_ 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.	(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***.

Justification:

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.

(Amendment 17)

Article 4.2

	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.

(Amendment 18)

Article 5

Processing of initial applications	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.	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.	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 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.***	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 ***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.	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.
Failure to reply within the prescribed time-limit shall be treated as a negative response.	

Justification:

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.

(Amendment 19)
Article 6

Processing of confirmatory applications; remedies	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.	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 ***one month***, provided that the applicant is notified in advance and that detailed reasons are given.	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.
Failure to reply within the prescribed time-limit shall be treated as a positive decision.	

Justification:

See the justification for the previous amendment.

(Amendment 20)
Article 7

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

Justification:

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.

(Amendment 21)

Article 8

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*** .

Justification:

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.

(Amendment 22)

Article 9

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***

	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.
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.***	***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).***

Justification:

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.

12 October 2000

OPINION OF THE COMMITTEE ON CULTURE, YOUTH, EDUCATION, THE MEDIA AND SPORT

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

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

Draftsman: Ole Andreasen

PROCEDURE

The Committee on Culture, Youth, Education, the Media and Sport appointed Ole Andreasen draftsman at its meeting of 13 July 2000.

It considered the draft opinion at its meetings of 19 September and 10 and 11 October 2000.

At the last meeting it adopted the amendments below unanimously.

The following were present for the vote: Giuseppe Gargani, chairman; Vasco Graça Moura, vice-chairman;Ulpu Iivari, vice-chairman; Ole Andreasen draftsman; Pedro Aparicio Sánchez, Per-Arne Arvidsson (for Maria Martens), Christine de Veyrac, Janelly Fourtou (for Christopher Heaton-Harris), Lissy Gröner, Cristina Gutiérrez Cortines (for Mónica Ridruejo), Ruth Hieronymi, Othmar Karas (for Vittorio Sgarbi), Elizabeth Lynne (for Marieke Sanders-ten Holte), Mario Walter Mauro, Pietro-Paolo Mennea, Barbara O'Toole, Doris Pack, Roy James Perry, The Earl of Stockton (for Sabine Zissener), Kathleen Van Brempt, Teresa Zabell Lucas.

SHORT JUSTIFICATION

Freedom of information is the acid test of a policy of transparency because it creates a contract between the citizens and public authorities to move documents from the sphere of confidentiality to the public domain. Public authorities, and especially the official European Institutions, prefer to promote public information through the Internet and communications campaigns or by selective leaks to journalist and lobbies. But what confidence can the public and users of media have in a policy of transparency, which depends entirely on the discretion of the holders of information and gives no right of equal access to the public?

The Amsterdam Treaty introduced a new article 255 into the EC Treaty, which determines a right for citizens and residents of the European Union of access to documents of the European Parliament, the Council and the European Commission. The European Union institutions exercise judicial, legislative and administrative powers, and are therefore accountable to citizens. The link between this layer of government and the citizen is however unusually distant, indirect and problematic for the latter to determine. If the right of access to information is a precondition for political participation this is particularly true the further the decision making process is removed from the local sphere. The rapporteur has the opinion that the higher the degree of openness of the European Institutions is, the higher is the legitimacy towards the European Union and its institutions among the citizens. A higher degree of legitimacy is also assumed as a precondition of a more positive attitude of the "man in the street" towards the European Union.

Freedom of information is part of transparency, which in turn is particularly important to connect or reconnect the Union with its citizens. The Committee on Culture, Youth, Education, the Media and Sport considers that the transparency of the decision making process strengthens the democratic nature of the European Institutions and the public's confidence in the administration. According to the European Ombudsman, Mr. Söderman, "transparency means that: the process through which public authorities make decisions should be understandable and open; the decisions themselves should be reasoned; as far as possible, the information on which decisions are based should be available to the public".

Special efforts are needed by the European Institutions with their complex decision making process to achieve transparency and overcome the disinterest shown for example by voters in the June 1999 European election campaign for the European Parliament. Access to documents contributes to open debate on more equal terms and improves the chances not only of well-organized interest but also private individuals and bodies less expert in European affairs, to participate and enrich the debate.

Individual citizens and organized interests should not only have a right to receive information, but also monitor the activities of public authorities carried out on their behalf, and indeed it is their duty to do so. The current Commission in the hearings with the European Parliament committees has shown strong commitment towards greater transparency. The Commissions proposal is regarded as a step forward, but it is regrettable that the proposal does not guarantee as broad openness as possible. This will obstruct the realization of the spirit of the

Amsterdam Treaty: to work as openly as possible. The main problem of the proposal of the Commission is the large number of exceptions to the accessibility of documents, which are way too general. A result of the vague formulation of the exceptions is that the competent European Institutions solely can decide if a certain document should be open to the public or not.

The proposal does not concern internal documents, at any stage. Plans and working documents are important to the democratic process and should be made public after a certain time. The rapporteur has the full understanding of the fact that all documents cannot be made public at all stages, but as background material they are important and should be accessible.

It is a step forward that the proposal proposes both incoming and outgoing documents to be covered by the proposal. However, it is strongly dissatisfactory that the proposal contains limits of access for incoming documents.

AMENDMENTS

The Committee on Culture, Youth, Education, the Media and Sport calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission[1]	Amendments by Parliament

(Amendment 1)
Recital 1 (new)

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.

Justification:

A truly democratic debate cannot develop in the European Union without open institutions. To ensure such a debate is nevertheless important in order to gain trust and confidence, especially among young people, who are the future of Europe.

(Amendment 2)
Recital 2 a (new)

Openness and transparency are also the best means to overcome any problems that may be caused by cultural and linguistic differences among the Member States

Justification:

Cultural and lingustic differences between Member States have to be recognised. Transparency can help to avoid problems arising from these differences.

(Amendment 3)
Recital 3 a (new)

The rules on public access to documents

[1] OJ C 177 E from 27.6.2000, p. 70.

	should be drafted as clearly as possible. They should outline the limits of access as well as the procedure for complaints.

Justification:

These rules are directed at a broad public that might be interested in requesting access to documents. It is therefore particularly important that it is clear and easy to understand for all possible users which rights they have and how they could possibly enforce those rights

(Amendment 4)
Article 3 (a)

Definitions

For the purpose of this Regulation :

(a) "document" shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording); 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;	(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 ***which were explicitly marked non-public***, and excluding informal messages;

Justification:

Transparency of the decision-making process means, that internal documents should also be available to the public. There may of course be some internal documents which should be excluded from public acces, in these particular cases they should be clearly marked non-public from the beginning.

(Amendment 5)
Article 4

Exceptions

The institutions shall refuse access to documents where disclosure could significantly undermine the protection of:	***1. The right of access to official documents may be restricted only if restriction is necessary having regard to:***
(***a) the public interest and in particular :***	(a) ***the security of the Union or its relations with a foreign state or an international organisation;***
- 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,	(b) ***the central finance policy, monetary policy or foreign exchange policy of the Union;***
- court proceedings,	(c) ***inspections, investigations and audits;***
- inspections, investigations and audits,	
- infringement proceedings, including the preparatory stages thereof,	(d) ***court proceedings, infringement proceedings, including the preparatory stages thereof;***
- the effective functioning of the institutions;	***(e) the public economic interest;***
(b) ***privacy and the individual, and in particular:***	
- personnel files,	***(f) the protection of the personal integrity or economic conditions of individuals;***
- information, opinions and assessments given in confidence with a view to recruitments or appointments,	***(g) the protection of commercial and industrial secrets;***
- 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;	***h) the preservation of animal or plant species;***

(c) ***commercial and industrial secrecy of 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 awart 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.	
	2. When the above exceptions are only relevant as regards part of a document, partial access shall be granted.

Justification:

The list of the exceptions from public access should be drafted as clearly and simply as possible. There should be as few exceptions as possible. The grounds on which a third party or a Member State might reasonably request classification of a document are adequately covered by article 4.1. Where only part of a document is covered by an exception, access must be granted to the remainder of the document.

(Amendement 6)

Article 5, paragraph 4

Processing of initial applications

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

Justification:

.At the confirmatory stage the Commission proposal already states that failure to reply within the prescribed time limit should be treated as a positive response by the EU-Institution. There is no reason why this should not already be the case at the first stage of the procedure.

This will oblige the EU-Institutions to treat all requests seriously and speedily

(Amendment 7)
Article 7(1)

1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy.	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.	***The cost of the document provision service shall be determined annually (initially on the basis of estimates), with a view to establishing a rate which shall apply only in the following instances:***
	- where the document clearly serves a commercial or a professional management-related purpose and, in any event, where the applicant is an undertaking or the office of a professional concern;
	- where drawing up the requested document necessitates employing considerable human, computer or material resources.

Justification:

Costs relating to professional services provided by private-sector undertakings, bodies or professionals should not be borne by the public purse. Furthermore, potential routine requests for documents which may amount to thousands of pages or require several days' administrative or computer work should be discouraged.

(Amendment 8)
Article 9

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

Justification:

The complete nature of the register needs to be made explicit, otherwise there could be room for omissions.

18 October 200

OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (COM(2000) 30 – C5-0057/2000 – 2000/0032(COD))

Draftsman: Hanja Maij-Weggen

(Enhanced Hughes Procedure)

PROCEDURE

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

It considered the draft opinion at its meetings of 13 July, 12 September and 12 October 2000.

At the last meeting it adopted the following by 15 votes to 4, with 3 abstentions.

The following were present for the vote: Giorgio Napolitano, chairman; Christopher J.P. Beazley, vice-chairman, Ursula Schleicher, vice-chairman; Hanja Maij-Weggen, draftsman; Teresa Almeida Garrett, Enrique Barón Crespo, Georges Berthu, Jens-Peter Bonde, Richard Graham Corbett, Giorgos Dimitrakopoulos, Andrew Nicholas Duff, Monica Frassoni, Sylvia-Yvonne Kaufmann, Jo Leinen, Iñigo Méndez de Vigo, Gérard Onesta (for Johannes Voggenhuber), Jacques F. Poos, Konrad K. Schwaiger (for Lennart Sacrédeus), Mariotto Segni, António José Seguro, The Earl of Stockton, Margrietus J. van den Berg (for Olivier Duhamel), Bob van den Bos (for Cecilia Malmström).

SHORT JUSTIFICATION

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.

The Rapporteur for the committee responsible and the Draftsman met several times and, on the basis of their respective drafts, developed a set of common compromise amendments

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

which they decided to present in identical terms as revised drafts. In its vote of 12 October the Committee adopted the bulk of the amendments tabled by the Draftsman. These are identical to the amendments contained in the revised draft report. Only the following amendments were not adopted and amendments tabled by members were adopted instead. Am. 17 on Art. 2 (2), identical to Am. 58 Malmström, Thors – second part, was not adopted. The Commission text remains unchanged so far.

Am. 21 was withdrawn in favour of Am. 68 Malmström, Thors on Art. 4 as orally modified (letter (d) deleted).

Am. 70 Malmström, Thors complementing Am. 28 on Art. 5 was adopted.

Am. 72 Malmström, Thors adding a new paragraph 3 to Art. 7 was adopted.

Am. 36 was not adopted, am. 75 Dimitrakopoulos on Art. 9 c (new) was adopted instead.

Amendments 50, 52 and 55 Malmström, Thors introducing new recitals were adopted. Am. 11 on recital 12 was withdrawn by the draftsman and am. 56 Dimitrakopoulos was adopted instead.

AMENDMENTS

The Committee on Constitutional Affairs calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission[1]	Amendments by Parliament
	(Amendment 1) Recital 0 (new)
	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
	Justification:

[1] OJ C177, 27.6.2000, page 70

A truly democratic debate cannot develop in the European Union without open institutions. To ensure such a debate is nevertheless important in order to gain trust and confidence, especially among young people, who are the future of Europe.

*(A*mendment 2)
Recital 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.	***In the context of the European Union, Declaration 17 attached to 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 freedoms, and the rule of law on which the Union is founded as stated in Article 6 of the Treaty of the European Union.***

Justification:

Declaration 17 attached to the Maastricht Treaty is quoted as this emphasises the importance of transparency for the democratic nature of the institutions and a connection is made to Article 6 of the EU Treaty.

.(Amendment 3)
Recital 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.	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 ***internal*** 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.

Justification:

This amendment highlights the fact that previously there was no specific base in the Treaty for the adoption of rules on access to documents.

(Amendment 4)
Recital 3 a (new)

	The rules on public access to documents should be drafted as clearly as possible. They should outline the limits of access as well as the procedure for complaints.

Justification:

These rules are directed at a broad public that might be interested in requesting access to documents. It is therefore particularly important that it is clear and easy to understand for all possible users which rights they have and how they could possibly enforce those rights.

(Amendment 5)
Recital 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.	***In recognition of the need for further progress in the Union towards greater transparency, the Treaty of Amsterdam introduced Article 255 to the EC Treaty on the right of access to documents. Consistent with the principle of openness in Article 1 of the Treaty on European Union, t***he purpose of this Regulation ***which implements Article 255*** 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 EC Treaty.

Justification:

This Regulation builds on the progress that has already been made and in no circumstances should this Regulation be a step backwards.

(Amendment 6)
Recital 6a (new)

Where bodies and agencies are created by the European Parliament, the Council and the Commission and those bodies are created by and under the responsibility of the institutions, then those bodies should, as regards access to documents, apply the principles in this Regulation.

Justification:

Bodies and agencies created by the institutions should apply the principles in this Regulation to ensure that the institutions are not able to escape provisions of this Regulation by transferring responsibilities to the bodies and agencies created by them as this would undermine the effectiveness of Community law.

(Amendment 7)
Recital 7a (new)

Consistent with Article 207 of the EC 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.

Justification:

Reference should be made to Article 207 of the EC Treaty and that greater access should at least be given to documents relating to a legislative procedure.

(Amendment 8)
Recital 8

The principles laid down by this	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***.	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.***

Justification:

Where specific rules on access to documents are justified, they should be expressly listed in an Annex.

(Amendment 9)
Recital 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	***In principle, all the documents of the institutions may be 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.***

Justification:

All documents of the institutions should be accessible subject to limited exceptions.

(Amendment 10)
Recital 10

In order to ensure that the right of access is	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*** where***by*** at the confirmatory stage no response ***is treated as a positive response***.	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 bring court proceedings or complaints to the Ombudsman.***

Justification

It is not necessary to refer to the existing practice as the Regulation can establish an improved procedure. A failure to reply to a confirmatory application should entitle the applicant to seek further remedies

(Amendment 11)
Recital 10a (new)

	Each institution shall examine by reference to specific exceptions laid down in this Regulation whether access to a document may be limited when it is produced or received and at the latest when it is listed in the register.

Justification

This amendment corresponds to Article 3 a (new).

(Amendment 12)
Recital 11

Each institution ***should*** tak***e*** the measures ***necessary*** to inform the public about the new provisions in force***; f***urthermore, to make it easier for citizens to exercise their rights arising from this Regulation, each institution should ***provide access to*** a register of documents.	Each institution ***shall be responsible for*** tak***ing*** measures to inform the public about the new provisions in force. ***F***urthermore, to make it easier for citizens to exercise their rights arising from this Regulation, each institution should ***establish*** a register of documents.

Justification

There should be a positive obligation on the institutions to take measures to inform the public about the new provisions

(Amendment 13)
Recital 11 a (new)

	Each institution should encourage and educate the staff concerned to help and assist the citizens when they try to exercise their rights arising from this Regulation.

Justification:

These rules are directed at a broad public that might be interested in requesting access to documents. It is therefore particularly important that the staff working at the institutions can help the citizens getting access to the documents.

(Amendment 14)
Recital 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.***	***Consistent with the principle of subsidiarity in Article 5 of the EC Treaty*** this Regulation ***does not*** amend existing national legislation on access to documents. ***Consistent with*** the principle of loyalty which governs relations between the Community institutions and the Member States ***in Article 10 of the EC Treaty 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.***

Justification:

Amendment 11 on recital 12 of the compromise text refers also to declaration 35 attached to the Treaty of Amsterdam.
This declaration was adopted by the conference of Amsterdam and says: " The Conference agrees that the principles and conditions referred to in Article 191 a(1) of the TEC (= Article 255(1) of the Consolidated Version) will allow a Member State to request the Commission or the Council not to communicate to third parties a document originating from the State without

its prior agreement."
This text is intended to mean not only that Member States may make a request (that goes without saying), but that Commission and Council have to abide by such a request. Thus the intention of this declaration, which is not mentioned in the Commission Proposal by the way, is clearly in contrast with the attitude of our rapporteurs reflected in amendment 24 (Article 4b new).
Independently of what legal value might be attributed to such declarations adopted by an intergovernmental conference in general, this declaration cannot prejudice in any way the outcome of a legislative procedure referred to in the Treaty (Article 255(2)). Otherwise the democratic principle which finds its expression in the codecision procedure would become meaningless.

Member States and institutions should take the final decisions on applications received by them, while taking into account the opinion of the author of the documents.

(Amendment 15)
Recital 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.***	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 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 documents[1], Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents[2] and European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access	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 of 14 August 2000***[2], Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents[3] and

[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).
[2] OJ L 46, 18.2.1994, p. 58; Decision as amended by Decision 96/567/EC, ECSC, Euratom (OJ L 247, 28.9.1996, p. 45).

to European Parliament documents[1]	European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents[4] ***which should therefore be repealed.***

Justification

The specific rules adopted to implement the Regulation must be in conformity with the Regulation. The existing decisions on access to documents must be repealed as otherwise it will lead to a confusing situation for the citizens. The recent Council decision on security and defence documents must also be repealed.

(Amendment 16)
Heading (new)

CHAPTER I
GENERAL PRINCIPLES AND SCOPE

Justification:

This Regulation should be divided into chapters and sections for clarity.

(Amendment 17)
Art. 1 a (new)

Purpose

1.The purpose of this Regulation which implements Article 255 is to give effect to 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.

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

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2 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).

3 OJ L 46, 18.2.1994, p. 58; Decision as amended by Decision 96/567/EC, ECSC, Euratom (OJ L 247, 28.9.1996, p. 45).

1 OJ L 263, 25.9.1997, p. 27.

4 OJ L 263, 25.9.1997, p. 27.

	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.

Justification

A first paragraph should point out that what follows is not "a gift" from the institutions to the citizen but simply the exercise of an obligation duty introduced into the Treaty establishing the European Community to take decisions in accordance with the democratic principles of openness and accountability, as defined in Article 1 of the Treaty of the European Union.

(Amendment 18)
Article 1

Article 1 ***General principle and b****eneficiaries*	*Article 1* ***B****eneficiaries*
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*** 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.***

Justification:

It should be clearly stated that citizens have a right of access. Third country nationals not resident in the Union should be granted access to documents under the same conditions even where they have no enforceable right.

(Amendment 19)

Article 2, paragraph 1

Article 2 ***Scope***	*Article 2* ***Institutions***
1. This Regulation shall apply to all documents ***held by the institutions, that is to say, documents*** drawn up by the***m*** 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.***	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***.

Justification:

Articles 28 and 41 TEU expressly provide that the right of access applies to documents in the second and third pillar. Access to documents of third parties should not be limited to documents sent after the entry into force of this Regulation

(Amendment 20)
Article 2a (new)

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 a written request.
5. This Regulation does not affect the right of Member States to grant access to documents in accordance with their national legislation.
6. This Regulation does not authorise the withholding of documents from the European Parliament
7. This Regulation does not deprive citizens of the Union of rights

	concerning access to documents acquired under instruments of international law.

Justification:

Article 255 refers to a general right of access to documents of the institutions and does not make any reference to an "application" for documents. Access can be granted in other ways. The Regulation should be without prejudice to higher standards of access under national legislation. The purpose of this Regulation is to implement and define the limits of the citizens' right of access to documents. The European Parliament , as a body with power of scrutiny, cannot be subject to the same limitations. The scope of 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.

(Amendment 21)
Article 3

Definitions	*Definitions*
For the purposes of this Regulation:	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;***	(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) ***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 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	(b) "institutions" shall mean the European Parliament, the Council and

Commission;	the Commission ***as well as***
	- ***Their internal and subsidiary bodies (such as Parliament Committees, Council Committees and Working Groups)***
	- ***Agencies created by the institutions and accountable to the institutions, as listed in Annex I.***
	Within a period of one year, the Commission shall where necessary present formal proposals in relation to the agencies in Annex I.
	In relation to the Europol Convention, the provisions of the Treaty apply.
(c) "European Parliament" shall mean Parliament bodies (and in particular the Bureau and the Conference of Presidents),Parliamentary Committees, the political groups and departments;	***Deleted.***
(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;	***Deleted.***
(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;	***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-	(g) "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

Community institutions and bodies and non-member countries.	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.	***Deleted.***

Justification:

Documents must have an 'author' acting in an official capacity and responsible for the content and classification "Internal documents" should not be excluded from the scope of the Regulation.

The "institutions" should include the internal and subsidiary bodies which must be defined in the internal rules of procedure of the institutions.

To ensure that the institutions do not escape their obligations by delegating powers to bodies and agencies, the principles in the Regulation should apply to those bodies which have been created by the institutions and for which they have responsibility.

These agencies are defined in Annex I. The Commission should make proposals within one year of the entry into force of the Regulation concerning modifications to the rules establishing the bodies, the internal rules of procedures or procedures for appeals.

In relation to Europol, it is for the Council to ensure the revision of the Convention on the initiative of a Member State or from the Commission, after consulting the Parliament.

(Amendment 22)
Article 3a (new)

	Principles on Access
	1. All documents shall be 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 has to classify the document 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 except in exceptional circumstances.

The classification must include a reference to the exception concerned.

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

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

Justification:

The principle should be that all documents of the institutions are public unless the author responsible classifies them as non-public at the time that the documents are produced. The classification should include the reasons based on the exceptions in Article 4 and the period of time for which the classification is valid, this may be by reference to a specific period of time, the phase of the procedure or a specific event. At the time of an application for a document on the register the institution must reassess whether the classification is correct.

(Amendment 23)
Article 4

Exceptions	Exceptions
The institutions may refuse access to documents where disclosure could significantly undermine the protection of:	***Public access to documents may be limited on the following grounds:***
(a) ***the public interest and in particular:***	(a) ***access may be denied on grounds of public interest where disclosure could significantly undermine***
_ public security,	***- Public security,***
_ defence and international relations,	***- Monetary stability,***
_ relations between and/or with the Member States or Community or non-Community institutions,	***- defence and military matters***
_ financial or economic interests,	***- vital interest relating to the EU's international relations.***
_ 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;***	(b) ***access shall be denied where disclosure would be contrary to the protection, under law, of the right to privacy of an individual;***
(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;***	(c) ***access may also be denied on grounds of commercial secrecy where this outweighs the public and private interest in disclosure;***
(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.***	

Justification:

The list of exceptions proposed by the Commission would provide a justification for the exclusion of practically any document and the proposal does not distinguish between different kinds of presumptions for confidentiality. The application of an exception should be based on a comparing of the interests involved and not just a blanco exception.

The exception concerning third party documents would undermine the whole idea about public access to documents and should therefore be deleted. This does not mean that there are no legitimated rights of protection but they have to be covered by the other exemptions.

No CFSP/ESDP documents should automatically be excluded from public access. Only those containing information that could risk lives, military operations or sensitive information with third countries, international organisations or negotiations, can be fully or partly, excluded from public access, after a case by case examination.

(Amendment 24)
Article 4a (new)

Measures to be agreed by the institutions

Within a period of one year, the institutions shall agree the following common elements which will provide the basis for the adoption of the internal rules referred to in Article 255:

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

- ***treatment and protection of such documents, including very confidential documents***

- ***application of the security gradings (top secret, secret, confidential or restricted)***

- ***transmission of classified documents between the institutions***

- ***procedures relating to challenges to classifications and referral/appeal to the European Information Officer***

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

c) 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].

[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***

Justification:

An interinstitutional agreement on the classification of documents and disclosure of documents is necessary. This should include a system for resolving disputes concerning the classification of another institution.

(Amendment 25)
Heading (new)

CHAPTER II
THIRD PARTIES AND MEMBER STATES

Justification:

This regulation should be divided into chapters and sections for clarity.

(Amendment 26)
Article 4b (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 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.

5. The institutions shall decide whether the document or part of document in question can be made public.

6. If the institution decides that, contrary to the opinion of the Member State or

third party, the document should be disclosed, the institution shall immediately inform the third party or Member State of its 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 the right to seek interim measures from the European Court of Justice.

Justification:

At the time that the Member State or third party sends a document to an institution, it should already indicate whether and which parts it considers can not be disclosed . The final decision should be taken by the institution which has received an application but it must give the Member State or third party the possibility of seeking interim measures from the European Court of Justice.

(Amendment 27)
Article 4c (new)

Relationship with the Member States

2. 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.

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

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

Justification:

The Regulation should not modify the national rules on access to documents, but the Member States must respect the spirit of loyal cooperation in Article 10 of the EC Treaty.

(Amendment 28)
Heading (new)

CHAPTER III
ACCESS TO DOCUMENTS

Section 1 – Right of Access

Justification:

This Regulation should be divided into chapters and sections for clarity.

(Amendment 29)
Article 4d (new)

Publication of documents in The Official Journal

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

Justification:

Article 254 requires regulations, directives and decisions adopted under the co-decision procedure to be published in the Official Journal. Many other legislative documents are published in the Official Journal, but, consistent with Article 207, the institutions should be under an obligation to publish all "final" documents relating to legislative procedures.

(Amendment 30)
Article 5

Processing of initial applications	***Documents accessible on written application***
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.***	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 ***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.	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 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.***	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 can not be disclosed and, where relevant, the source from which the applicant may obtain the document***.
	4. ***Where the institution gives a negative reply because part of the document is covered by any of the***

exceptions provided for in Article 4, the institution shall provide an edited version of the document .

5. ***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.

6. ***If the institution considers that the document may be disclosed within a short period, the institution must send the document to the applicant within two weeks after the date on which the document can be disclosed***.

7. ***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.***

Justification:

If a system of classification is established, then, in the case of a negative response, the first response should state the reasons for refusal, the period of time for which the classification is valid and where the document has been published or is available from another body, the source from whom the applicant may be able to obtain the document.

Where part of the document is covered by an exception, then access must be granted to the remainder of the document. The institution should also inform the applicant of his right to make a confirmatory application.. Where the document is not currently public but where it will become public after a short period of time, for example, after being sent to the addressee, the institution should be required to send the document once it becomes public.

(Amendment 31)
Article 6

*Processing of confirmatory applications; **remedies***	*Processing of confirmatory applications*
2. Where the applicant submits a confirmatory application, the	2. Where the applicant submits a confirmatory application, the institution shall reply to him in

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.	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.***	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 ***entitle the applicant to seek the remedies in Article 9d.***

Justification:

A negative response should include the reasons for refusal and inform the applicant of the remedies available.

(Amendment 32)
Heading (new)

Section 2 – Exercise of right of access

Justification:

This Regulation should be divided into chapters and sections for clarity.

(Amendment 33)
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.	***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***.
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.***	2. Documents shall be supplied in ***the medium and*** in ***the*** language version ***requested by the applicant, or in the language of the application, provided that that language version is available.***
	3. Parliamentary scrutiny of all CFSP/ESDP documents excluded from public access should be assured by regularly informing a Select Committee of 5 up to 7 EP Members of the most concerned Committees, or the leaders of the political groups. This Select Committee would be then directly answerable to the Plenary Sitting.

Justification:

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. Second part of the second paragraph is moved to Article 5.

(Amendment 34)
Article 8

Reproduction for commercial purposes or other forms of economic exploitation	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.	***3. This Regulation does not interfere with rights, existing by virtue of intellectual or industrial property, that protect information contained in documents.***
	4. Any third party or Member State that receives information under this Regulation is responsible for their compliance with the applicable Union, national or international law relating to the protection of intellectual or industrial property rights.

Justification:

Legislation for the protection of industrial and intellectual property rights already exists and this Regulation should not change the existing rules. It will be the duty of the person disseminating the information to comply with the applicable legislation.

(Amendment 35)
Article 9

*Information **and registers***	*Information*
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.***	Each institution shall ***be responsible for informing*** the public of the rights they enjoy as a result of this Regulation ***and publishing in the Official Journal :*** f) ***the internal rules of procedure;*** g) ***the structure of the institution including details of any departments, committees, and formal working groups;*** h) ***the person to whom written applications for documents should be addressed and;*** i) ***the means of access to the register; and*** j) ***a code of conduct on transparency for officials***

Justification:

The institutions have a responsibility to inform the public of their rights and for providing the information such as the rules of procedures which will enable them to exercise their rights. The obligation to provide a register is now in Article 9a.

(Amendment 36)
Article 9a (new)

Registers

1. ***Within one year of the entry into force of the Regulation each institution shall establish a register of its documents which must be widely 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 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.

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

2. Documents of the institutions which must at a minimum be included in the register are listed in Annex III and include all documents created by that 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 and declarations.

Justification:

"On-line" access through a register would make it possible for citizens to have access without having to make a formal request. The register could therefore be an interface to the production and storage of documents of the institutions.

(Amendment 37)
Heading (new)

Section 3 – Information Officers.

Justification:

This Regulation should be divided into chapters and sections for clarity.

(Amendment 38)
Article 9b (new)

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) seeking opinion of the European Information Supervisor, if appropriate, on the classification and disclosure of document;

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

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

3. Further rules concerning the Information Officer shall be defined in the internal rules of each Community institution or body.

Justification:

Decisions on confirmatory applications shall be taken in an independent manner by an

official of an appropriately high rank. This official should have other duties in relation to the application of this Regulation by the institution, including dealing with disputes within the institution on the correct classification of documents and seeking the opinion of the European Information Supervisor. The internal rules should cover the qualifications, the appointment, dismissal, independence and the tasks, duties and powers of the Information Officer.

(Amendment 39)
Article 9c (new)

Appointment and tasks of the European Information Supervisor

1. The institutions shall by common accord nominate one person of appropriate rank as the European Information Supervisor, with the task of:

(a) deciding on appeals against negative decisions on confirmatory applications and ensuring the correct application of the exceptions listed in Article 4;

(b) cooperating with the Information Officers of the institutions and providing opinions on the classification of documents;

(c) arbitrating over conflicts between institutions regarding the classification of documents;

(d) examining issues likely to give rise to conflicts in relation to access to documents and proposing solutions to the institutions.

2. The European Information Supervisor shall be provided with the staff and resources required for the performance of his/her duties.

3. Further implementing rules

concerning the European Information Supervisor shall be adopted.

Justification:

The institutions should jointly appoint a European Information Supervisor who could take the final administrative decision or provide mediation, thus providing a low cost and effective remedy for citizens. The implementing rules shall in particular concern the qualifications, the appointment, dismissal, independence and the tasks, duties and powers, obligations of confidentiality and access to documents of the European Information Supervisor.

(Amendment 40)
Heading (new)

CHAPTER III
REMEDIES AND REPORTS

Justification:

This Regulation should be divided into chapters and sections for clarity.

(Amendment 41)
Article 9d (new)

Remedies

2. Where an applicant receives a negative response to a confirmatory application, then, in accordance with Article 195 of the EC Treaty, the applicant may apply to the Ombudsman to examine whether a case of maladministration has occurred.

5. Where an applicant receives a negative response to a confirmatory application, the applicant may in accordance with Article 230 , lodge an appeal before the European Court of

Justice.

6. ***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.***

7. ***The Council shall consider whether changes need to be made to the rules of procedure of the European Courts in relation to access to documents, in particular in relation to confidential documents and costs in transparency cases.***

Justification:

The Regulation should state clearly the remedies available to citizens. Appeals may be brought either by the party who has been refused access or by the party whose information is to be disclosed. The possibility of appeal to the ECJ should ensure that the system of exceptions is not abused.

(Amendment 42)
Article 9e (new)

Reports

1. ***Within a period of three years 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.***

Justification:

Reporting obligations should be included in the Regulation.

(Amendment 43)
Heading (new)

Transitional provisions

Justification:

This Regulation should be divided into chapters and sections for clarity.

(Amendment 44)
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].	***Deleted***

Justification:

Logically, the provisions on the entry into force of internal rules of procedure should follow the provisions on the entry into force of the Regulation.

(Amendment 45)
Article 11

Entry into force	*Entry into force*
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].***	***1.*** This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Communities*.
This Regulation shall be binding in its entirety and directly applicable in all Member States.	This Regulation shall be binding in its entirety and directly applicable in all Member States.

Justification:

Any transitional provisions should be included in the relevant articles.

(Amendment 46)
Article 11a (new)

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].

Justification:

The internal rules of procedure should be adapted to conform to the Regulation.

(Amendment 47)
Article 11b (new)

From the date of the entry into force of the present 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 the Council decision of 14 August 2000[1],

b) Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents[2],

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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).

2 OJ L 46, 18.2.1994, p. 58; Decision as amended by Decision 96/567/EC, ECSC, Euratom (OJ L 247, 28.9.1996, p. 45).

c) European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents[1].

Justification:

The existing rules must be repealed as otherwise the situation will be confusing for the citizens. The recent Council Decision on security and defence documents must also be repealed..

(Amendment 48)
Annex I (new)

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

[1] OJ L 263, 25.9.1997, p. 27.

European Observatory for Racism and Xenophobia

Justification:

Bodies and agencies created by the institutions should not be exempt from the application of the Regulation. Although they are not specifically mentioned in Article 255, it would undermine the effectiveness of the Treaty provision if they are not included.

(Amendment 49)
Annex II

Documents to be published in the Official Journal
Final Acts

(a) Regulations, directives and decision 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; Final Acts

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 Coreper 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;

(d) 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 and one or more States or international organisations sets up a body vested with powers of decision, the Council shall decide, when such an agreement is concluded, whether decisions to be taken by that body should be published in the Official Journal.

Justification:

The internal rules of procedure should be adapted to conform to the Regulation.

(Amendment 50)
Annex III

Documents to be included at a minimum in the register

- ***all documents created in the course of a procedure for the adoption of legally binding measures***
- ***all documents relating to the formulation and adoption of policy or strategy***
- ***all documents relating to the implementation of Union law***

Justification:

Categories of documents which must be accessible through the register should be listed in an Annex.

11 October 2000

OPINION OF THE COMMITTEE ON PETITIONS

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

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

Draftsman: Astrid Thors

PROCEDURE

The Committee on Petitions appointed Astrid Thors draftsman at its meeting of 23 February 2000.

It considered the draft opinion at its meeting of 13 September 2000 and 10 October 2000.

At the last meeting it adopted the amendments below unanimously.

The following were present for the vote: Vitalino Gemelli, chairman, Roy Perry, 1st vice-chairman, Proinsias De Rossa, 2nd vice-chairman, Astrid Thors, draftsman ; Herbert Bösch, Felipe Camisón Asensio, Jonathan Evans, Janelly Fourtou, Laura González Álvarez, Ulpu Iivari, Margot Keßler, Jean Lambert, Véronique Mathieu, Hans-Peter Mayer, Eurig Wyn.

SHORT JUSTIFICATION

1. The role of the Committee on Petitions

In the European institutional framework the Committee on Petitions is the main intermediary between the institutions and European citizens. It is appropriate for the Committee on Petitions to deliver an opinion on the present proposal on public access to documents for two reasons.

(1) The right of petition, which is provided for in Article 174(1) of the European Parliament's Rules of Procedure, is open to any citizen of the European Union. It is an instrument of democratic control and administrative transparency which is necessary to the normal operation of any democratic parliament, thus constituting a fundamental right of European citizens.

(2) In accordance with Annex VI, Title XX, of the Rules of Procedure, the Committee on Petitions is also responsible for relations with the Ombudsman.

By virtue of Article 138e, paragraph 1, of the EC Treaty and Article 3(7) of the Statute of the Ombudsman, if the Ombudsman finds that there has been maladministration in the course of an inquiry, he sends a report to the European Parliament.

2. Ombudsman's inquiry

It was in this legal context that the European Ombudsman forwarded to Parliament, by letter of 15 December 1997, his special report further to the own-initiative inquiry on public access to documents (C4-0157/98).

Two factors prompted the Ombudsman to initiate this inquiry:

- 'the Ombudsman had received a number of complaints which appeared to suggest that the staff of Community institutions and bodies are not always adequately instructed as to how to deal with requests for documents and that documents are sometimes disclosed only after a considerable delay';

- 'part of the Ombudsman's mission is to enhance relations between the Community institutions and bodies and European citizens. The creation of the Ombudsman's office was meant to underline the commitment of the Union to democratic, accountable and transparent forms of administration'.

3. The Ombudsman's special report

In this report the Ombudsman notes that the rules governing public access to documents should constitute an instrument of good administration and contribute to the process of raising public awareness of the work of the Community institutions and bodies and to making these activities accessible. They should also give substance to the principle of transparency, to which the European Union has reaffirmed its commitment.

It is interesting to note in this context several opinions delivered by the European Parliament when it adopted the resolution on the Special Report by the European Ombudsman to the European Parliament following his own-initiative inquiry into public access to documents (C4-0157/98)(A4-0265/98); the fundamental importance of transparency for increased efficiency of the Community's administration; the danger represented by a unilateral Council decision on what constitutes 'legislation'; the establishment in all the Community institutions and bodies of public registers of all documents received or produced; the close link between a code of conduct on good administrative practice by Community institutions and increased transparency and improved public access to documents.

It is also necessary to underline how important it is that citizens of the European Union should be able to exercise their rights as citizens and that the Community institutions should provide them with information on questions relating to the areas of activity of the institutions and point people who mistakenly approach the wrong institution or body in the direction of the appropriate one.

4. Complaints to the Ombudsman

The question of transparency has been highlighted in a number of complaints to the Ombudsman. Here references are made to cases which deal with issues that are also dealt with in the draft regulation on access to documents.

Member State - Council relationship (complaint 1056/96/IJH) is relevant in relation to recital 12 and article 11 of the draft proposal on access to documents. It is interesting to note that the General Secretariat of the Council had previously rejected a request for a calendar of meetings. It was, however, settled that the Presidency is a function, or office, of the Council itself. In the context of the same complaint it was also clarified that access cannot be denied to documents of which an institution is a joint author under the rules of Council decision 93/731/EC on access to documents.

Definition of **administrative documents** (own-initiative inquiry OI/99/IJH), in which the ECB argues that the definition clearly does not include minutes of the Governing Council meetings on monetary policy issues. This argument illustrates the danger that the notion of the administrative document poses. (The corresponding article in the draft regulation on access to documents is article 3).

Repetitive applications (complaint 634/97/PD) do not, according to the Ombudsman, include applications by the same person for different documents, nor is the article to be interpreted in a way that brings all applications for a very large number of documents within its scope (article 5 in the draft regulation).

Protection in the interest of **confidentiality of its proceedings**; complaint 634/97/PD, in which the Council's reasoning as to why it is relevant to protect this interest in relation to the documents in question was found by the Ombudsman to be inadequate, and complaint 1057/96/IJH, in which the Ombudsman considers it incorrect to argue that the existence in documents of references to national positions can outweigh the interests of the applicants in all situations ("harm test").

Business secrets – joint complaints 620/97 PD and 306/98 PD; after inspecting a report drawn up by a consultant, the Ombudsman concluded that the report in question, apart from one page with the consultant's evaluation of a state aid scheme, contained only factual elements submitted by authorities and a company. The Ombudsman suggested that, as the investigation for which the report was commissioned and the requests for confidentiality were withdrawn, the Commission should disclose the **factual information**.

Public interest

a) court proceedings (case 506/97 JMA)

The Commission had argued that protection of the public interest in the case of court proceedings gives it the power to refuse access to documents which relate to a pending legal case. This, according to the Court of First Instance, is wrong as it argues that a *distinction must be drawn between documents drafted by the Commission for the purpose of a particular court case and… other document which exist independently of such proceedings. Application of the exception based on the protection of the public interest can be justified only in respect*

of the first category of documents.

b) public security (1057/25.11.96/IJH)

When making reference to the protection of public security as a reason to deny access to documents, further explanation should be given as to the nature of the information contained in the documents, in the view of the Ombudsman.

AMENDMENTS

The Committee on Petitions calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission[1]	Amendments by Parliament

(Amendment 1)
Recital 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.	***When taking decisions on the disclosure of a document the need to protect some of the interest protected by the exceptions must be weighted against the interest to promote transparency and the public discussion.***

Justification

As has also become evident during the debate following the Council's decision on amending its rules on access to documents concerning military and non-military crisis management, it is necessary to establish a hierarchy between this draft regulation and other rules adopted by the three institutions. Such a hierarchy means that Recital 8 cannot be retained. On the other hand, it is necessary to introduce in the articles a so-called harm test, that is when a body is pondering access to documents, the interest to protect must be weighted against the interest for the public to have access to such documents.

(Amendment 2)
Recital 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.	***(delete)***

[1] OJ C 177, 27.06.2000, p. 70

Justification

Your rapporteur starts at a different point from the Commission on the question of what exemptions should be laid down. The list of exemptions should be exhaustive, and internal documents should not always be excluded from access. It is clear that institutions must have room for reflection, but that should not exclude them for ever. See amendment of Article 4.

(Amendment 3)
Recital 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.	***It is neither the object nor the effect of this Regulation to harmonise or amend existing national legislation on access to documents.***

(Amendment 4)
Recital 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.***	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. ***Such provisions may not have other restrictions than those foreseen in this regulation, and they may not be wider than those mentioned in article 4.***
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[2] and European Parliament Decision 97/632/EC, ECSC,	***(delete)***

[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).

[2] OJ L 46, 18.2.1994, p. 58; Decision as amended by Decision 96/567/EC, ECSC, Euratom (OJ L 247, 28.9.1996, p. 45).

Euratom of 10 July 1997 on public access to European Parliament documents[1].

Justification

The first part arises from the same reasons as the amendment to Recital 8. This regulation sets the outer limits of what can be excluded from access. For technical reasons is it also easier to have a separate recital on the entry into force of this regulation, as set out in recital 13a.

(Amendment 5)
Recital 13 a New

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[2], Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents[3] and European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents[4].

Justification

For reasons of clarity two different things are put in different recitals; see the amendment to Recital 13.

(Amendment 6)
Recital 13 b (new)

The rules on the register will apply at the latest to documents submitted to or issued by the institution when this regulation enters into force.

Justification

A very important part of rules on access to documents concerns the register. It is the public

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1 OJ L 263, 25.9.1997, p. 27.
2 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).
3 OJ L 46, 18.2.1994, p. 58; Decision as amended by Decision 96/567/EC, ECSC, Euratom (OJ L 247, 28.9.1996, p. 45).
4 OJ L 263, 25.9.1997, p. 27.

reference to which everybody can go and check what is happening, what is discussed. Therefore your draftsman has introduced in the articles and recitals references to the register. We know that it would be impossible to draw up registers afterwards, so therefore the idea is that the registers will be compulsory only when the regulation enters into force. In this way the registers will be compulsory only when the regulation enters into force. In this way the registers may be planned in a structured way. Today there are many technical ways of producing registers at the same time as the documents are made. It is natural that the institutions would use all the best data-processing techniques to develop registers.

(Amendment 7)
Article 1

	The purpose of this Regulation is to promote openness and 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.
*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 natural or legal person shall have the right to the widest possible access to ***documents*** of the institutions within the meaning of this Regulation, without having to cite reasons for their interest, subject to the relevant Rules in this Regulation.
	A petitioner, a complainant, and any other person, natural or legal, whose right, interest or obligation in a matter is concerned (a party) shall also have the right of access to a document which is not accessible to the public, but may influence the consideration of his/ her case, as described in this Regulation and in implementing provisions adopted by the institutions.

Justification

Your draftsman proposes introducing a clear article on the purpose of the Regulation. It would also be wise to say that the same principles also apply to information, and not only to documents.

Amendments have also been made to extend the right of access to documents to all those who ask for them – not only persons within the Union.

To make it clear that a party must have the right to access all documents that may influence decisions concerning him/her, according to specified rules and exemptions .

(Amendment 8)
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.	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.	***(delete)*** ***(See article 11)***
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 sets the limits for denying access to documents. Specified rules on access to documents adopted by the institutions may not contain other restrictions on access to official documents than those provided for in this regulation.***
	3. Rules on professional secrecy may not override the principles of this Regulation.
	4. When the public disclosure of a document constitutes a specific form of dissemination as described in the data protection directives, it shall also be dealt with under this Regulation. Personal data may however be disclosed to a recipient who, pursuant to the provisions of the data protection directives, has a right to record and use such data.

Justification

The amendment of Article 2, point 2, establishes the hierarchy between this regulation and specified rules adopted on the basis of the regulation. Point 4 also defines the relationship to

the protection of personal data.

(Amendment 9)
Article 3

For the purposes of this Regulation:	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;***	(a) "document" shall mean any content whatever its medium (written ***or visual presentation*** on paper or stored in electronic form or as a sound, visual or audiovisual recording) ***which is prepared on behalf of the Institution or given to a person acting on behalf of the Institution in connection with a matter within the competence or duties of the Institution and also when a document has been commissioned by the Institution, excluding informal messages which are not considered to be documents;***
(b) "institutions" shall mean the European Parliament, the Council and the Commission ;	(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;	(c) "European Parliament" shall mean Parliament bodies (and in particular the Bureau and the Conference of Presidents), Parliamentary Committees, the political groups and departments***, and anybody who has the authority to decide on behalf of the European Parliament***
(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;	(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***, and anybody who has the authority to decide on behalf of 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	(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***, and anybody who has the authority***

powers;	***to decide on behalf of 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**.**	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***, and be kept up to date.***

Justification

Several definitions are amended. First, it is important to add that visual presentations can also be considered to be documents or parts of documents, point a. As explained in the short justification, it is not wise to make a distinction as to what constitutes an administrative document, as ideas are very different in the different institutions and in different administrative cultures.

It would be important to include in the scope of the regulation all documents, whether commissioned directly by the institutions or on their behalf. If power is delegated to some body outside the institutions, documents produced by or held by them should also be covered by this directive.

Because of the amendment to Article 1 it is not necessary to define third parties, as suggested in point f.

(Amendment 10)
Article 3a (new)

The public domain/ Registration of documents

All documents held by the Institutions shall be registered.
A document is accessible to the public according to this Regulation when it should be registered and thus in the Public domain. Access to a document which is not yet in the public domain may be granted at the discretion of the Institution.
A document prepared by or on behalf of the institutions shall be registered as follows and thus be accessible to the public if none of the exceptions are applicable:

- ***e) a decision, a contractual commitment, a memorandum and other similar documents when they have been signed***
- ***f) minutes when they have been scrutinised and signed***

	g) an invitation to tender, to provide information, to comment on a proposal, when it has been signed
	h) in procurement cases, when the contract has been awarded
	i) Reports, discussion papers and similar documents should be registered when they are in the possession of the Institution in question.
	As soon as a document arrives at an Institution, it should be registered and be accessible to the public if none of the exceptions is applicable.
	Furthermore, to make it easier for citizens to exercise their rights arising from this Regulation, each institution shall provide access to the register of documents.

Justification

This amendment is one of the cornerstones of the opinion. It was a grave flaw in the draft that hardly any precise rules on the registers were proposed. The moment of entry into the registry defines the moment when a document can be accessed by the public. There need to be rules both for documents produced by the institution and held by the institution. Before that moment a document can be given to the public, at the discretion of those responsible. It should be given out as widely as possible.

(Amendment 11)
Article 4

The institutions ***shall*** refuse access to documents where disclosure could significantly undermine the protection of:	The institutions ***may*** refuse ***the public's*** access to documents where disclosure could significantly undermine the protection of:
(a) the public interest ***and in particular***:	(a) the public interest ***when it concerns:***
– public security,	– public security,
– defence and international relations,	– ***vital interests relating to*** defence and international relations,
– ***relations between and/or with the Member States or Community or non-Community institutions,***	– ***(delete)***
– financial or economic interests,	– financial or economic interests ***of the Community or Member States***,

– monetary stability,	– monetary stability,
– ***the stability of the Community's legal order,***	– ***(delete)***
– ***court proceedings,***	– ***the Institution's interventions in court proceedings until the Court has decided on the case,***
– ***inspections, investigations and audits,***	– ***prevention, investigation and prosecution of criminal activities,***
–	***(delete)***
– ***infringement proceedings, including the preparatory stages thereof,***	
– ***the effective functioning of the institutions;***	***(delete)***
(b) privacy and the individual, and in particular:	***(b) privacy, when it concerns data that must be protected according to Directive 95/46 on the protection of personal data,***
– ***personnel files,***	***(delete)***
– ***information, opinions and assessments given in confidence with a view to recruitments or appointments,***	***(delete)***
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;	***(delete)***
(c) commercial and industrial secrecy or the economic interests of a specific natural or legal person ***and in particular***:	(c) commercial and industrial secrecy or the economic interests of a specific natural or legal person ***when it concerns***:
– business and commercial secrets,	– business and commercial secrets, ***including intellectual and industrial property,***
–	
– ***intellectual and industrial property,***	– ***(delete)***
– industrial, financial, banking and commercial information, including information relating to business relations or contracts,	– 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)***
(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***.***	(d) confidentiality as ***required by the legislation of the Member State if the document emanates from that State.***
	When taking decisions on the disclosure of a document the need to protect some of the interests above must be weighted against the interest to promote transparency and public discussion.

Justification

Many changes are needed to this Article. Comparisons ought to be made with the existing Council decision. This article is in some ways more restrictive than the existing rules.

First, it would be very strange to have an obligation for the institutions to refuse access to documents ('shall' to be replaced by 'may').

Secondly, the grounds upon which access to documents may be denied are listed in an exhaustive manner.

Concerning the individual grounds for denying access:

- only vital interests relating to defence and international relations should be protected, that is information that would harm the operation of military forces and similar security interests. Vital interests in international relations also include those questions relating to sensitive information on the Community's relations with third countries. Questions regarding the Member States' relations cannot be regarded as needing special protection.

The stability of the Community's legal order is difficult to interpret, and therefore provisions relating to Court proceedings and to investigations of criminal activities are introduced instead.

In point b) the most reasonable thing seems to be to protect those questions where disclosure is restricted as a consequence of rules on data protection

In point d) an amendment is introduced so as to make the rule meaningful that documents held by the institutions are those that are covered by the regulations, and therefore a possibility for any third party to ask for confidentiality is not accepted.

The harm test is introduced as the last paragraph in this Article.

(Amendment 12)
Article 4a New

	Requests for information
	Members of the public shall be provided with the information they request. The information communicated shall be clear and understandable and made available in formats accessible to all citizens. The availability of alternative formats shall be publicised.
	Each institution shall take the requisite measures to inform the public of the rights they enjoy as a result of this Regulation.
	If a member of the public is addressing the wrong institution or body, he shall be advised where to turn to.

Justification

The aim of this amendment is to ensure that citizens and special groups of citizens such as the visually impaired are provided with relevant information in a relevant form. It also introduces a duty for the services to give information in a relevant form.

(Amendment 13)
Article 5

	1. Further to a request for access to documents, the Institution shall give access to the documents in accordance with this regulation and the implementing provisions of the Institution.
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.	All applications for access to a document shall be made 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.	***If an oral request for information is too complicated or too comprehensive to be dealt with, the person concerned shall be advised to formulate the demand in writing.***

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.	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 ***and, if accepted, transmit the documents in the same period.***
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.***	***(delete)***

Justification

Members of the public may request information either orally and in writing; if a request is very complicated, then it should be made in writing. The definition of repetitive is also most unfortunate, as has been seen in the cases before the Ombudsman.

(Amendment 14)
Article 6

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.	1. Where the applicant submits a confirmatory application, the institution shall reply to him in writing within one month of registration of the application, ***and if accepted transfer the documents to him in the same time 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 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.***	***(delete)***

(Amendment 15)
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.	1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, ***according to the choice made by the applicant*** The ***reasonable*** costs of his doing so may be charged to the applicant. 2. Documents shall be supplied in an existing language version***. If it exists in the language requested by the applicant, this version shall be forwarded to him.***

(Amendment 16)
Article 9

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.	***(delete)***

Justification

Similar provisions are suggested in articles 3a and 4a.

(Amendment 17)
Article 11

	The rules on register of documents will be applied to documents which are submitted to the institution after this regulation has entered into force.
This Regulation shall be binding in its entirety and directly applicable in all Member States.	***(delete)***

Justification

Deletion of second part because this regulation is not intended as a harmonising legal act.