



Council of the European Union
General Secretariat
The Secretary-General

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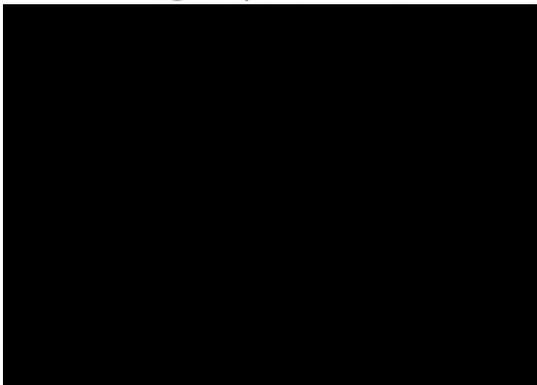
Ms Emily O'Reilly
European Ombudsman
Email: Registry@ombudsman.europa.eu

Subject: Strategic initiative SI/4/2021/TE

Dear Ms O'Reilly,

On 30 June 2021, you launched a strategic initiative as regards the way EU institutions, bodies, offices and agencies record text and instant messages sent/received by staff members in their professional capacity, while indicating that, at this stage, this may potentially be an overlooked issue.

Please find my response in the annex I to this letter.



ANNEX I: ANSWERS TO THE QUESTIONS

1) *On the applicable rules:*

- *Does the Council's record management decision cover text and instant messages, sent or received through professional and/or personal devices?*

Yes (see substantive reply below)

- *Does the Council's record management decision set out criteria/principles for the recording of text and instant messages?*

Yes (see substantive reply below)

- *Does the Council's record management decision set out how text and instant messages should be recorded by staff members? Please provide us with the relevant provisions of your record management decision?*

No (see substantive reply below)

As regards these three questions, the Ombudsman's letter rightly points out that "[t]he decision to record a certain piece of information in the administration's document management system should, according to EU law, not be dependent on the medium - be it a letter, an email, a text or instant message – but on its content".

As shown below, this is the approach implemented in the GSC.

First of all, the “Transparency Guide”¹ - available to the staff in 22 languages - reflects this approach by stressing that “[t]he rules on access to documents apply to all documents held by the Council, including those received from third parties, defined as concerning a matter relating to the policies, activities and decisions falling within the institution’s sphere of responsibility, whatever the medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) or indeed the type or classification.”

Second, Decision No 51/2020 of the Secretary-General of the Council establishing a policy on document and file management in the General Secretariat of the Council² sets out a definition that per se encompasses SMS and instant messages. Article 2 (e) and (f) of that Decision provides that “document’ means any content, in whatever medium, which is drawn up or received by the GSC and is in its possession, and concerns a matter relating to the activities, policies and decisions falling within the sphere of responsibility of the institutions and other entities the GSC assists or relating to its official tasks”, and that “drawn up by the GSC’ means that a document contains substantive information, is not of a personal nature, is not short-lived and is approved as ready for transmission by its author (i.e. it is validated by the person who is vested with the authority to adopt it or to take responsibility for it)”. In that regard, work is ongoing within the Document and File Management Implementation (DFMI) programme in view of adopting in the medium and long-term complementary internal guidelines and rules as well as new IT tools.

Third, the Information Management Contact Group (IMCG) of the GSC has adopted in May 2021 a document entitled “5-Step approach to decide on what to register”³. The latter is available to the staff and explains in a pedagogic and concrete manner when any support containing substantive information shall be considered as a document and registered according to the applicable rules.

Those rules and guidelines do not specifically address SMS and instant messages; however, they establish the criterion for defining what is a document and helping the staff in this regard, a definition that may also encompass the said electronic items. If such items fulfil the conditions for being qualified as “documents”, they should be treated accordingly under the general approach.

However, as explained in the reply letter, no substantive content is supposed to be exchanged by those electronic means; hence the absence of specific reference to SMS and instant messages in those rules and guidelines.

¹ Annex II.

² Annex III.

³ Annex IV.

2) *On the implementation of the applicable rules:*

- *How is the record management decision, as regards text and instant messaging, implemented? For example, has the Council issued relevant guidelines to staff or does it provide training on this matter to staff?*

The above-mentioned rules and guidelines are available to the staff and properly advertised by line managers within the different administrative divisions of the GSC. They address file management in general. As regard instant messages, it is worth mentioning the Note of the Director-General in charge of Digital Services (SMART) entitled “*Use of commercial messaging apps*”⁴. This note stresses that Instant Messages apps such as WhatsApp “*are not corporate information sharing tools in the GSC's IT portfolio*” and clearly recalls that messaging apps may be used “*only for short-lived, ephemeral chat about public or non-sensitive content; they are not to be used for sharing substantive content on sensitive matters*”.

- *In practice, has the Council recorded text and instant messages? If so, could the Council please provide examples?*

For now, no SMS nor instant messages have been recorded as “documents” within the meaning of Regulation No 1049/2001. This can be explained by the fact that staff are asked to use the IT tools provided by the GSC to produce and exchange documents (with substantive content) through the appropriate internal applications, and that SMS, WhatsApp and any other commercial instant messaging services, when used, may only serve a role as ephemeral logistical or organisational support. They may be used, for instance, in the margins of video or teleconferences to organise who will take the floor or to solve technical issues faced by certain participants.

- *Has the Council already received requests for public access to text and/or instant messages, under Regulation 1049/2001, or has the Council identified text and/or instant messages as falling within the scope of an access to documents request? If so, could the Council please give examples?*

So far, the Council has received two requests under Regulation No 1049/2001 for public access to text and/or instant messages, which gave rise to confirmatory applications. In the context of these requests, the GSC checked with the officials involved but was not able to identify any text and/or instant messages falling within the definition of a document within the meaning of Regulation No 1049/2001.

⁴ Annex V.

- *When receiving public access requests which cover, explicitly or implicitly, text and/or instant messages, how does the Council search for relevant 'documents'? Has the Council put mechanisms in place (for instance, guidelines or instructions) to assist staff in searching for such 'documents'?*

When receiving public access requests which cover, explicitly or implicitly, text and/or instant messages, the GSC checks whether content exchanged by text and/or instant messaging that concerns a matter relating to the policies, activities and decisions falling within the Council's sphere of responsibility has been drawn up or received by a Council staff member and remains in his/her possession. The Council considers that only exchanges with a minimum degree of stability and formality, as opposed to ephemeral or short-lived ones, qualify as a document under Regulation No 1049/2001. The Council has not so far put in place specific mechanisms for systematically registering content exchanged by text and/or instant messaging. As already explained above, the staff of the GSC is advised to avoid using commercial messaging applications for exchange of professional documents and/or of sensitive information.



Guide

Transparency – Access to documents

TEU

... 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.

Article 15

3. 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 documents of the Union's institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph.

DG F

Guide

Transparency — Access to documents

In-house user guide



DECEMBER 2010

Notice

This guide is designed for staff of the General Secretariat of the Council and national delegates involved in administering the rules on transparency and access to documents. It is not legally binding. This version may be subject to adjustment at a later date.

For more information about transparency and access to documents, you can consult the website: <http://www.consilium.europa.eu/transp> or contact the Council General Secretariat's Transparency Unit at the following address:

Rue de la Loi 175
B-1048 Brussels
Tel: +32 2 281 6710
Fax: + 32 2 281 6361

More information on the European Union is available on the Internet (<http://europa.eu>).

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The principle of transparency is laid down in Article 1 of the Treaty on European Union, which states that «*decisions are taken as openly as possible and as closely as possible to the citizen*». Each treaty since the Maastricht Treaty has contributed to greater transparency in the Union's decision-making procedure and greater public access to the institutions' documents.

Transparency has thus progressed with the workings of the Union now reflecting two basic principles demanded by citizens and by parliaments, underpinned by case law from the outset, and gradually taking root in all the Member States: openness and the duty of accountability of public administrations.

These principles are reflected in the everyday practice of the institutions and are gradually becoming an integral part of their culture, in particular by means of measures aiming at:

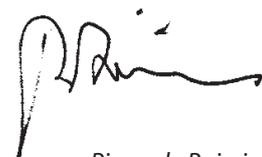
- giving the public access to the documents of the Union's institutions, bodies, offices and agencies
- making the decision-making processes of the Council and the European Parliament public when they are discussing and voting on draft legislation.

At the same time, a proper balance between security and transparency must be ensured. The Council must pursue a twin-track policy which is designed to protect classified information while disclosing as much information as possible to the public. However, experience has shown that wide accessibility to Council documents is likely to be better accepted, and even promoted, in a system which has rigorous and effective safeguards for rightfully classified information.

This guide is designed to help GSC officials and national delegates to Council bodies to manage transparency on a day-to-day basis. To that end, it gives full details of the rules and procedures applicable. Given the plethora of legal instruments and in-house instructions and the constantly changing nature of legislation and case law, regular updates are provided in the version of this guide available on the Council's Intranet site (Domus – About the Council).

I would moreover like to emphasise the reminders in this guide that the rules on transparency have to be applied in close liaison with the rules on document production and the security and protection of classified information. This guide should therefore be used in conjunction with the relevant guides¹ in order to ensure a consistent approach throughout the GSC.

I hope that this guide, together with the other volumes of the Council Guide, will be of use to all those working in the field of transparency. Any suggestions concerning its content will be welcome.



Pierre de Boissieu

¹ Guide for producing documents (available on Domus - About the Council).
Guide on the security of information produced by the Council of the European Union, September 2006, also available on Domus – DGs & Services – DG A – SSCIS – Security Office – Guidelines
http://domus/security/PDFDocs/Guidelines/web-Guide_on_the_Security_of_Information.pdf

BIC	Classified Information Office
CASE	Central Archives Search Engine
CP	Staff Note (Communication au personnel)
DG	Directorate-General
EUI	European University Institute
OJ	Official Journal
PDF	Portable document format
CFSP	Common Foreign and Security Policy
CRP	Council's rules of procedure
GSC	General Secretariat of the Council
TFEU	Treaty on the Functioning of the European Union
TEU	Treaty on European Union
EU	European Union



NOTE :

The titles of the following two Regulations:

- Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents,

and

- Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data

have been simplified as follows:

- Regulation 1049/2001,
- Regulation 45/2001.

Access to documents under the transparency rules

1. Treaty provisions

TEU, Article 1, second paragraph

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.

TEU, Article 10(3)

Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.

TEU, Article 16(8)

The Council shall meet in public when it deliberates and votes on a draft legislative act. To this end, each Council meeting shall be divided into two parts, dealing respectively with deliberations on Union legislative acts and non-legislative activities.

TFEU, Article 15

1. *In order to promote good governance and ensure the participation of civil society, the Union institutions, bodies, offices and agencies shall conduct their work as openly as possible.*
2. *The European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act.*
3. *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 documents of the Union's institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph.*

General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the European Parliament and the Council, by means of regulations, acting in accordance with the ordinary legislative procedure.

Each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents, in accordance with the regulations referred to in the second subparagraph.

The Court of Justice of the European Union, the European Central Bank and the European Investment Bank shall be subject to this paragraph only when exercising their administrative tasks.

The European Parliament and the Council shall ensure publication of the documents relating to the legislative procedures under the terms laid down by the regulations referred to in the second subparagraph.

2. Basic concepts

1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the Union's institutions, bodies, offices and agencies, subject to the principles and the conditions defined in accordance with Article 15(3) of the TFEU².

The principles and conditions of access to Council documents are laid down in Regulation 1049/2001 and Annex II to the CRP.

2. Applications for access under this right will be accepted and handled irrespective of the applicant's nationality, place of residence or identity, or the reasons for his application³.
3. The rules on access to documents apply to all documents held by the Council⁴, including those received from third parties⁵, defined as concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility, whatever the medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording)⁶ or indeed the type or classification.
4. Certain categories of document, in particular where the Council is acting as legislator, can be accessed directly by the public via the public register of Council documents, which can be consulted on the Council's Internet site.
5. Where documents are not directly accessible via the register, an application for access can be made.
6. The GSC has a duty to provide a reply to any request for access within 15 working days, although this can, exceptionally, be extended by a further 15 working days.
7. Access to a document may be refused where its disclosure would adversely affect the protection of certain public and/or private interests defined in Regulation 1049/2001. The applicant then has 15 working days to submit any confirmatory application, which is examined by the Council.
8. If a confirmatory application is totally or partially rejected, the applicant may lodge a complaint with the European Ombudsman and/or bring legal proceedings against the institution.

2 General principles and limits governing this right of access to documents are determined by the European Parliament and the Council, particularly in Regulation 1049/2001. Specific provisions regarding access to documents are elaborated by each institution, body, office and agency in its own Rules of Procedure. Note that the Court of Justice of the European Union, the European Central Bank and the European Investment Bank are subject to these provisions only when exercising their administrative tasks.

3 Article 1 of Annex II to the CRP specifies that «any natural or legal person» has access to Council documents.

4 Article 2(3) of Regulation 1049/2001.

5 A third party is defined in Article 3(b) of Regulation 1049/2001 as «any natural or legal person, or any entity outside the institution concerned, including the Member States, other Community or non-Community institutions and bodies and third countries».

6 Article 3(a) of Regulation 1049/2001.

3. Recent developments in document access

On 7 May 2008, the Commission submitted a proposal to the Parliament and the Council for a recast of Regulation 1049/2001⁷ designed to amend certain provisions of the Regulation, mainly to take account of the entry into force of the «Aarhus Regulation»⁸ on access to information in environmental matters and of the case law on access to documents.

On 11 March 2009, the Parliament adopted 92 amendments to the Commission proposal, while postponing a vote on the legislative resolution, which usually concludes its first reading⁹.

During the second three months of 2009 the Council Working Party on Information scrutinised the proposed recast article by article, bearing in mind the amendments adopted by the Parliament in March 2009.

The entry into force of the Lisbon Treaty on 1 December 2009 has made it necessary to bring the Regulation into line with the new Treaty provisions, notably to extend public right of access to the documents of all the Union's institutions, bodies, offices and agencies.

Under these circumstances, the Commission has stated that the changes needed to adapt the Regulation to Article 15(3) of the TFEU could be made as part of the recast of Regulation 1049/2001, but that, if the current legislative procedure does not progress within a reasonable time frame, it could contemplate submitting a proposal for amendment of Regulation 1049/2001 confined to the changes brought in by Article 15(3) of the TFEU.

The European Parliament will have to give its opinion at first reading¹⁰.

7 9200/08 (COM(2008) 229 final).

8 Regulation (EC) No 1367/2006, see Annex 3.

9 PE T6-0114/2009.

10 Progress on the recast proposal can be followed on the European Parliament site (Legislative Observatory – procedure No 0090 of 2008) (<http://www.europarl.europa.eu/oeil/file.jsp?id=5632032>).

The public register: directly accessible documents

1. Function and structure of the register

Each institution has to establish a public register of documents in order to make as many documents as possible directly available to the public¹¹.

The public register of Council documents is a list of reference numbers identifying Council documents, including classified and/or sensitive documents¹².

The texts of the documents are either

- directly accessible: the register contains the full text;
- partially accessible (P/A): the register contains the accessible part of the text and indicates that it can also be obtained in another language from the Transparency Unit, on request;
- not accessible (N/A): the register does not contain any of the text.

«ST» (Standard) Council documents are automatically entered in the register by Workflow as soon as they are produced¹³.

For each document, the register contains the following information:

- the reference number;
- the title;
- the interinstitutional file number;
- the subject;
- the document type;
- the sender;
- the addressee;
- the document date;
- the date of the meeting;
- the date of archiving;
- the language.

11 Articles 11 and 12 of Regulation 1049/2001.

12 See Chapter III.

13 Workflow is the system which monitors the production and coding of Council documents.

FOR INFORMATION: data on the register¹⁴

- The register of Council documents has been operational since 1 January 1999 at the address <http://register.consilium.europa.eu>.
- On 31 December 2009, the register listed 1 371 608 documents (all languages), 1 039 973 (75,8 %) of which were public, i.e. available either in downloadable format (1 017 286 documents – 97,81 % – in PDF or HTML format), or on request (22 687 documents – 2,18 % – in another format).
- On 31 December 2009, the register contained 22 686 documents (1,65 %) marked «P/A», 3 891 (17,15 %) of which were in PDF format and accessible on line¹⁵. «P/A» documents entered in the register before 1 February 2004, the date from which any new document subject to partial access was made directly available to the public via the register, are not generally downloadable, but can be made available on request.
- In 2009, 122 160 documents (69,4 % of the documents produced in 2009) were made public via the register as soon as they were circulated.

2. Documents available as soon as they have been circulated

The GSC makes the following documents relating to the legislative process and to discussions and public debates on legislative items available to the public as soon as they have been circulated:

- provisional agendas for meetings of the Council in its various configurations;
- any text adopted by the Council and intended for publication in the Official Journal;
- documents submitted to the Council which are listed under an item on its agenda included in the «legislative deliberations» part or marked with the words «public deliberation» or «public debate»¹⁶;
- notes submitted to Coreper and/or to the Council for approval («I/A» and «A» item notes) concerning draft legislative acts¹⁷;
- acts adopted by the Council during an ordinary or a special legislative procedure and joint texts approved by the conciliation committee under the ordinary legislative procedure;
- documents originating from a third party which have been made public by the author or with his consent.
- cover notes and copies of letters concerning legislative acts and acts referred to in Article 8(1) of the CRP addressed to the Council by other institutions or bodies of the European Union or by a Member State.

¹⁴ For more information, see the Council's annual reports on access to documents; Publications Office of the European Union, also available on <http://www.consilium.europa.eu>, under "Documents – Policy regarding access to Council documents".

¹⁵ Partial disclosure is made pursuant to Article 4(6) of Regulation 1049/2001.

¹⁶ Article 8(1) and Article 11(5)(b) of Annex II to the CRP

¹⁷ Article 11(5)(c) of Annex II to the CRP.

3. Documents available following adoption of a legislative act

After adoption by the Council of an act in a legislative procedure, after the approval of a joint draft by the conciliation committee or after the final adoption of a legislative act, the GSC also makes available via the register, subject to any exceptions under Article 4 of Regulation 1049/2001, all the preparatory documents relating to the act involved which were established before one of the acts was adopted in the course of the legislative procedure, with the exception of opinions and contributions from the Legal Service¹⁸.

In order to comply with these provisions, following adoption of the legislative act in question, DG F2's Public Records of Proceedings Unit (telephone: +32 (0)2 281 6409, e-mail address: public.record@consilium.europa.eu) draws up a list of the documents concerned and forwards it to the relevant directorate-general for its opinion – within 10 working days – before releasing the documents.

4. Acts and documents published in the Official Journal of the EU

In addition to being made public via the register, the acts resulting from the Council's legislative and non-legislative activity are published in the Official Journal of the European Union (OJ) in all the EU's official languages, in accordance with Article 17 of the CRP.

The OJ comprises:

- an «L» series (legislative and non-legislative acts);
- a «C» series (information, notices, preparatory acts and opinions)¹⁹;
- a supplement «S» (public procurement notices issued by the contracting authorities of the Member States, third countries and EU institutions).

The OJ is available on paper or in electronic form (Internet or CD-Rom).

Texts published in the OJ are accessible on the following Internet sites:

- EUR-Lex (<http://eur-lex.europa.eu/>), a free interinstitutional database: the L and C series of the OJ from 1998 onwards and the directory of legislation in force;
- TED («Tenders Electronic Daily» for the S series (<http://ted.europa.eu>)).

For any question regarding the publication of acts in the Official Journal, please contact the Official Journal team of the Directorate for Quality of Legislation (DQL) of the Legal Service (telephone: +32 (0)2 281 21 32, fax: +32 (0)2 281 76 43, e-mail address: SERVICE PUBLICATIONS OJ or official.journal@consilium.europa.eu).

¹⁸ Article 11(6) of Annex II to the CRP. The preparatory documents in question are examined and processed by DG F2's Public Records of Proceedings Unit.

¹⁹ Certain documents in the C series are published only in electronic form (e.g. first-reading positions for preparatory acts adopted under the ordinary legislative procedure).

REMINDER: Council documents

- Documents produced by the directorates general have to abide by the rules set out in the Guide for producing documents²⁰.
- Various categories of documents can be created:
 - on the basis of type: «ST», «PE», «CM», «SN», «DS», etc.
 - on the basis of circulation:
 - documents marked «LIMITE»²¹;
 - public documents. These do not bear any code.
 - on the basis of classification:
 - Documents «RESTREINT UE», «CONFIDENTIEL UE», «SECRET UE» or «TRÈS SECRET UE/EU TOP SECRET» documents.
- «ST» (Standard) documents are reserved for any text submitted to the Council or one of its preparatory bodies²². They are automatically included in the register if they are not classified and have no circulation code.
- «PE» documents correspond to PE-CONS documents under the ordinary legislative procedure. They do not bear any circulation code and are automatically included in the register.
- «CM» (Communication) documents serve the following functions: officially convening meetings; forwarding agendas; provisional circulation of lists of «I/A» and «A» items; launching written procedures and accreditation procedures; consultation, sending and/or requesting urgent information²³. They do not appear in the register, except when they are used to forward agendas for meetings.
- «SN» («no standard number») documents are reserved exclusively for the GSC's in-house use, for administrative purposes such as translation or the preparation of «ST» documents. It is forbidden to circulate them to members of the Council or its preparatory bodies²⁴. They do not appear in the register.

²⁰ Also available on Domus

²¹ The detailed rules for handling documents marked "LIMITE" are given in 5847/06 and in Staff Note No 49/06 (see Annex 14).

²² See Staff Note No 200/08 (Annex 13).

²³ See Staff Note No 200/08 (Annex 13).

²⁴ "SN" documents produced prior to Staff Note 134/02 of 24.09.02 must be kept, filed and sent to the central archives by the competent Directorates-General so that they can be produced should access be requested

- «DS» documents (meeting documents) are provisional documents which are registered with central coordination for distribution in meeting rooms (e.g. draft conclusions, compromise proposals). They must be kept to an absolute minimum. The directorates-general are responsible for keeping and filing these documents and sending them to the central archives so that they can be produced should access be requested. They must either:
 - be converted into «ST» documents as soon as possible;
 - be referred to in the minutes, record or outcome of proceedings, in the form of a list of the documents examined by the body in question (if no record is drawn up, a list will be annexed to the following record);
 - be registered on a list made public at regular intervals via the register of documents.

These documents are not included in the register, but quoted in other documents which do appear there (e.g. minutes and outcomes of proceedings).

- Unofficial documents (non-papers) and the like. These can be produced only in exceptional circumstances when, owing to time constraints, it is not possible to issue the document as an «ST» or «DS» document. These documents have to keep to the same rules as «DS» documents (conversion into «ST», reference in the minutes or outcome of proceedings or the list of documents made public, arrangements for keeping, filing and archiving). They are thus not automatically included in the register but appear there under the same arrangements as for DS documents.

The public register: references to documents which are not accessible

The public register contains references identifying documents whose content is not directly accessible, including references to classified documents.

1. LIMITE documents

Documents with the LIMITE circulation code are in-house documents whose unauthorised disclosure might adversely affect the interests of the EU or its Member States to some degree. They are not classified documents.

Following an application for access, the text of a LIMITE document may become available via the register. In this case, it is marked «PUBLIC».

REMINDER: using the LIMITE code

- If a document is not classified and does not bear the LIMITE circulation code, its content will be made public immediately, via the register.
- Documents which have to be made directly available to the public as soon as they are circulated must never bear the LIMITE circulation code.
- The LIMITE circulation code should be used, thus preventing direct access, for the following categories of documents:
 - documents whose disclosure could undermine the protection of the public interest (public security, defence and military matters, international relations, financial, monetary or economic policy), the privacy and integrity of the individual, commercial interests, court proceedings and legal advice; inspections, investigations and audits; or the decision-making process of the Council;
 - documents that reflect the positions of individual delegations;
 - documents not originating from the Legal Service (outcomes of proceedings or Presidency notes) but which contain references to the Legal Service's position on legal points.

N.B.: However, documents produced by GSC departments other than the Legal Service should not summarise or paraphrase the content of a written opinion or a written contribution from the Legal Service.

2. Classified documents

The texts of classified documents (RESTREINT UE, CONFIDENTIEL UE, SECRET UE or TRÈS SECRET UE/EU TOP SECRET) are never included in the register, unless they have been fully or partially declassified.

References to «RESTREINT UE» documents appear in the register in the same way as «ST» documents with the «LIMITE» circulation code.

As regards sensitive documents within the meaning of Regulation 1049/2001 (CONFIDENTIEL UE, SECRET UE or TRÈS SECRET UE/EU TOP SECRET)²⁵, the register may include, subject to the author's consent and as instructed by him, some or all of the following references: number and type, title, sender, addressee, creation date, sub-codes, date of meeting, date of archiving and original language.

The level of classification does not appear in the register.

Application may be made for access to classified documents (RESTREINT UE and sensitive documents), as with any other document, whether or not references appear in the register. They cannot be disclosed without the author's agreement.

REMINDER: entry in the register and disclosure

Disclosure of a document is a separate matter from entry in the register. Accordingly:

- entry in the register is entirely without prejudice to the outcome of an application for access;
- the fact that a document may not be entered in the register does not preclude applications for access to it. Such applications must be dealt with in accordance with Regulation 1049/2001.

3. Documents sent via the CORTESY network – COREU messages

The CORTESY system is designed for ease of day-to-day communication on CFSP matters between the Member States' foreign ministries, the GSC and the Commission. Although the system was designed to send classified information, it is also used for sending non-classified messages.

COREU messages are not entered in the register but, like any other Council document and/or document held by the Council, they may be – and often are – the subject of applications for access, which are dealt with in accordance with Regulation 1049/2001, and hence in line with the rules and practices summarised in this guide.

REMINDER: handling classified information

- Classified information has to be handled in accordance with the Council's security regulations and Regulation 1049/2001 (Articles 9 and 11). All the rules for dealing with classified documents are given in the Guide to the security of information²⁶.
- The Council's security regulations provide for 4 levels of classification:
 - «RESTREINT UE»: documents whose unauthorised disclosure could be disadvantageous to the interests of the EU or of one or more of its Member States;

²⁵ In an information security context, the term «sensitive» is often used to describe information which is not classified but still needs some degree of protection.

²⁶ Council of the European Union, September 2006, also available on Domus – DGs & Services – DG A – SSCIS – Security Office – Guidelines http://domus/security/PDFDocs/Guidelines/EN-guide_informations_II.pdf

- «CONFIDENTIEL UE»: documents whose unauthorised disclosure could harm the essential interests of the EU or of one or more of its Member States;
 - «SECRET UE»: documents whose unauthorised disclosure could seriously harm the essential interests of the EU or of one or more of its Member States;
 - «TRÈS SECRET UE/EU TOP SECRET»: documents whose unauthorised disclosure could cause exceptionally grave prejudice to the essential interests of the EU or of one or more of its Member States.
- Regulation 1049/2001 defines sensitive documents as those classified as «CONFIDENTIEL UE», «SECRET UE» or «TRÈS SECRET UE/EU TOP SECRET» *which protect essential interests of the EU or of one or more of its Member States in the areas covered by Article 4(1)(a) of that Regulation, notably public security, defence and military matters.*
 - Access to classified information is confined to persons «with a need to know» (the «need to know» principle), as determined by the originating department.
 - Access to information classified as «CONFIDENTIEL UE», «SECRET UE» or «TRÈS SECRET UE/EU TOP SECRET» is also restricted to those with valid security clearance at the requisite level.
 - The security regulations state that information should only be classified where necessary and that the classification should be determined by the degree of sensitivity of the contents.
 - To maintain the credibility of the system for protecting classified information, it is essential to avoid over-classification by classifying documents in such a way as to reflect the real risk involved²⁷.

N.B.: The Decision establishing the Council's security regulations was adopted without prejudice either to the Article of the Treaty laying down the right of public access to Council documents (ex Article 255 TEC) or to the instruments implementing it (Regulation 1049/2001).

4. Production of classified documents and implications for accessibility

The production of classified documents, including sensitive documents within the meaning of Regulation 1049/2001, is governed by the security regulations, which spell out the rules on marking, in-house transmission, circulation, storage and destruction of these documents.

When a document is produced, more specifically when it is given a code in Workflow, the author must select an appropriate classification for the contents of the document and complete the headings under «data publishable in the public register» (type of document, title (subject), sender, addressee, date of document, subject codes, meeting) so that the information can be sent to the public register from Workflow.

Before production of the document is complete, Workflow sends the author the message: «Forward to the public register». He can then choose to confirm, amend or delete some or all of the publishable data in the register (type of document, title, sender, addressee, date, subject codes, meeting).

For RESTREINT UE documents, the following have to be publishable:

- reference number
- subject (title)
- date of entry
- subject codes
- meetings.

The following data are publishable solely with the author's authorisation:

- type of document
- sender
- addressee.

For sensitive documents within the meaning of Regulation 1049/2001, none of the above data are automatically publishable. The author:

- must stipulate the references that may appear in the public register: number and type, sender, addressee, creation date, sub-codes, date of meeting, date of archiving and original language and, if necessary, a description of the contents (title);
- must check, if he decides to publish the title, that it does not undermine the protection of the interests referred to in Article 4 of Regulation 1049/2001, i.e. that the description of the document does not disclose any information that should be protected;
- may decide, in exceptional cases, in particular when information on the very existence of the document concerned would prejudice the interests protected by its classification, that no reference – either reference number or date – should appear in the register.

Documents classified as «TRÈS SECRET UE/EU TOP SECRET» receive special treatment and do not follow the production process described above²⁸.

Handling applications for access to documents

1. The Transparency Unit

The Transparency Unit (DG F 2) is responsible for implementing Council policy on public access to documents, more specifically:

- processing initial and confirmatory applications sent to the Council;
- consistent application of the rules on access to documents.

It works in close cooperation with all the GSC departments concerned and can be contacted:

- By e-mail: access@consilium.europa.eu
- by telephone: +32 (0)2 281 67 10;
- by fax: + +32 (0)2 281 63 61;
- by post: Transparency Unit, Rue de la Loi 175, B-1048 Brussels

2. Initial applications

All applications must be formulated in writing in one of the EU's official languages. No reasons need be given. The application for access may be sent:

- directly to DG F's Transparency Unit,
- to another GSC department or official,
- to the Member State which holds the document concerned,
- to another institution which also holds the document concerned.

When the application for access is lodged with another GSC department, it must immediately be forwarded by e-mail to the Transparency Unit (access@consilium.europa.eu), which will process and follow up the application.

3. Examination of the document and exceptions to accessibility

The document to which access is requested is examined by the Transparency Unit to determine whether its disclosure would undermine protection of the public or private interests described in the exceptions laid down in Article 4 of Regulation 1049/2001. These exceptions, which are listed exhaustively, allow the institution to refuse to provide a document where disclosure would undermine the protection of:

- the public interest, as regards public security, defence and military matters, international relations or the financial, monetary or economic policy of the Community or one or more Member States;
- privacy and the integrity of an individual, in particular in accordance with the legislation regarding the protection of personal data;
- commercial interests of a natural or legal person, including intellectual property;

- court proceedings and legal advice;
- the purpose of inspections, investigations and audits.

In addition, the institution will refuse access to a document where disclosure would seriously undermine the institution's decision-making process. This may be:

- a document drawn up by an institution for internal use, or received by it, which relates to a matter on which it has not yet taken a decision,
- a document containing opinions for internal use as part of deliberations and preliminary consultations, even after the decision has been taken.

N.B: It should be stressed that, of the exceptions listed above, those laid down in Article 4(1) of Regulation 1049/2001 which relate to the protection of the public interest or privacy are imperative and the institution may not derogate from them.

If, on the other hand, the information in the document(s) requested is covered by one of the exceptions provided for in Article 4(2) or (3), the institution must examine whether disclosing the information is nevertheless in the general public interest.

That «exception to the exceptions» applies when the following two conditions are met:

- (1) when disclosing the documents requested is in the public interest, and
- (2) when that interest overrides the interest in protection.

REMINDER: potential prejudice to the decision-making process

The following criteria should be used to assess prejudice, even though they may not be the determining factor:

- the state of the dossier: (1) has agreement already been reached within the Council or one of its preparatory bodies on the act to be adopted or (2) is the dossier still under discussion?
- the degree of sensitivity of the dossier: (1) is it a routine matter (for example, a question of procedure or of implementing existing rules) which does not raise any political problems or (2) is it a politically sensitive (legislative or other) draft on which it is difficult to reach agreement?
- the content of the document: (1) does the document set out the facts on the progress of work within the Council on the matter, without going into detail as to the questions still pending or (2) does the document give options for solving the outstanding issues?

In practice, if it is not clear whether a «LIMITE» document should be disclosed, the Transparency Unit consults the originator of the document in the GSC department responsible. These consultations are normally conducted in writing (by e-mail) and the author is given a reasonable amount of time to reply, bearing in mind the deadline of 15 working days laid down in Regulation 1049/2001. The author must reply to the Transparency Unit giving his views on how the application should be dealt with (access, partial access or refusal); in the case of partial access or refusal, he should give the reasons for his opinion, making a detailed case for the Transparency Unit to apply the exceptions referred to in Article 4 of Regulation 1049/2001.

4. Applications for access to classified documents

For applications for access to «RESTREINT UE» documents which are not sensitive documents within the meaning of Regulation 1049/2001, the Transparency Unit requests the texts from the Classified Information Office (BIC – DG A 3):

- in cases where it is clear that the document should not be disclosed, it turns down the application on the basis of the exceptions provided for in Article 4 of the Regulation;
- in all other cases, it consults the author of the document in the GSC department responsible.

For applications for access to sensitive documents within the meaning of Regulation 1049/2001 (documents classified as «TRÈS SECRET UE/EU TOP SECRET», «SECRET UE» or «CONFIDENTIEL UE»), the author of the document must always be consulted²⁹. Officials in the Transparency Unit and the Legal Service authorised to access classified information up to and including «SECRET UE» level can consult the document subject to authorisation by the author, who will personally inform the BIC accordingly.

The author of a classified document must reply to the Transparency Unit giving his views on how the application should be dealt with (access, partial access or refusal) within a reasonable period, bearing in mind the deadline of 15 working days laid down in Regulation 1049/2001, in particular:

- if he judges that the applicant cannot be given access to the document or that only partial access can be given, he must give reasons for that opinion, making a detailed case for applying the exceptions referred to in Article 4 of Regulation 1049/2001;
- if he judges that the document may be disclosed wholly or in part, the document, or those parts which may be disclosed, must be declassified.
 - For total declassification, the author of the document must apply to the BIC, which will carry out the whole procedure;
 - For partial declassification, the Transparency Unit prepares the extract from the document which can be made public, on the basis of instructions from the author. This will then be sent to coordination by the directorate-general from which the document originated, to be circulated and forwarded to the public register.

5. Applications for access to Council documents lodged with a Member State

When an application for access is made to a Member State, there are three possible scenarios:

- Examination of the document makes it clear whether the document should be supplied or not, in which case the Member State replies to the applicant accordingly;
- Examination of the document does not make clear whether the document should be supplied or not, in which case the Member State consults the GSC, which replies on the Council's behalf within 5 working days. The Member State is required to take a decision «*that does not jeopardise the attainment of the objectives of the Regulation*» and replies to the applicant³⁰. In practice, the GSC's advice is generally followed.

²⁹ Article 9(2) of Regulation 1049/2001 («Applications for access [...] shall be handled only by those persons who have a right to acquaint themselves with those documents.»).

³⁰ First paragraph of Article 5 of Regulation 1049/2001.

- The Member State may also choose to forward the application directly to the GSC for processing. In its reply to the applicant, the GSC informs him that his application has been forwarded to it by the Member State and that any confirmatory application should be addressed directly to the Council.

In all these cases, the Member States are required to keep to the deadlines set in the Regulation.

6. Applications for access to Council documents lodged with another institution

Applications for access may be made to another institution. Pursuant to the memorandum of understanding between the European Parliament, the Commission and the Council on applications for access to documents of other institutions³¹:

- the relevant department of the institution which received the application for access consults the GSC's Transparency Unit immediately;
- the GSC's Transparency Unit replies within 5 working days;
- the institution which received the application replies to the applicant according to the advice received.

Sensitive documents are still handled in the same way: in particular, they cannot be disclosed without the written agreement of the author, i.e. the originating institution.

7. Applications for access to documents originating from Member States

If the application for access concerns documents originating from Member States as members of the Council, the documents or parts of documents summarising their oral statements or containing their written positions are considered as Council documents³².

If the application for access concerns documents on questions which do not directly fall within Council activities, the documents in question are deemed to be third-party documents. Such documents may, for example, include the findings of studies on a subject on which there is no ongoing proposal but which the Member State feels should be brought to the others' attention.

When a document originating from a Member State is deemed to be a third-party document:

- if it is clear that the document should not be disclosed, because one of the exceptions provided for in Article 4(1), (2) or (3) is applicable, the Transparency Unit sends the applicant a letter rejecting the application, without consulting the Member State concerned;
- if there is any doubt or if the document is sensitive³³ or was submitted to the Council before 3 December 2001 (date of entry into force of Regulation 1049/2001) or if the Member State concerned has asked that the document should not be disclosed without its prior consent, the Member State is consulted immediately.

The Permanent Representative of the Member State concerned is consulted through the country's member of the Working Party on Information and asked to convey the Member State's opinion in writing within 5 working days of being consulted, to make sure that the deadline of 15 working days for replying to the application can be met.

N.B.: The Member State must justify any objections to disclosure of the document concerned by one of the exceptions provided for in Article 4(1), (2) or (3) of Regulation 1049/2001.

31 See Annex 2.

32 See 6203/02 (Note to COREPER on public access to documents – Issues of principle, see in particular page 2 "Definition and treatment of documents originating from Member States") and 6898/02 (summary record of the COREPER meeting on 6 and 8 March 2002, page 12, Annex 6).

33 In practice, the GSC also consults Member States on "RESTREINT UE" documents.

8. Applications for access to documents originating from third parties other than Member States

When a document originates from another third party, the following steps are followed:

- if it is clear that the document should not be disclosed, the applicant is sent a letter of refusal;
- if it is a classified document³⁴, the third party is consulted; its agreement is required for disclosure;
- in all other cases, the third party is also consulted.

The third party is always consulted in writing (including by e-mail) and a reasonable time limit is allowed for it to reply, given the 15 working day time-limit set in Regulation 1049/2001. Likewise, it is always asked to give its opinion in writing.

9. Applications for access to lists of delegates to the Council's preparatory bodies

Applications for access to Council documents often relate to the lists of delegates to the Council's preparatory bodies. These lists, which are regularly updated by the "policy" directorates-general, have to bear the "LIMITE" code to protect the personal data of the delegates and officials whose names appear on them³⁵.

If access to these lists is requested pursuant to Regulation 1049/2001, the application must be examined in accordance with Regulation 45/2001, including Articles 8 and 18 thereof³⁶ to check that disclosure does not breach the person's privacy or integrity.

In addition, the directorate-general responsible must put the following guarantees in place:

- check compliance with Article 9(1) and (2) of Regulation 45/2001 ("Transfer of personal data to recipients, other than Community institutions and bodies");
- obtain the agreement of the preparatory body concerned;
- attach a statement to the lists spelling out that the data on the list have been collected solely for the purposes of contacting GSC officials or delegates attending the proceedings of the working party or committee concerned, and that these data may not undergo any subsequent processing incompatible with that purpose.

34 All security agreements concluded between the EU and third parties contain the principle of "originator consent" for subsequent circulation and declassification of documents.

35 Regulation 45/2001, which defines the rules applicable to EU institutions and bodies in the field of data protection, OJ L 8, 12.1.2001, p. 1 (see Annex 15).

36 Article 8 of Regulation 45/2001 lays down the conditions for the transfer of personal data to recipients other than Community institutions and bodies; Article 18 of that Regulation provides for the data subject's right to object.

10. Access granted following an initial application

If examination of the document leads to the conclusion that the exceptions provided for are not applicable, the application is accepted and the document is sent to the applicant in the language and in the form requested, by e-mail or, more rarely, by sending a paper copy.

Where an applicant has been granted access to a LIMITE ST document, the content of that document is automatically included in the register and becomes public. The document then carries not just the initial «LIMITE» code, but also an electronic stamp «PUBLIC», indicating its change of status.

REMINDER: accessibility as soon as documents are issued

Since the vast majority of the documents requested are made public on initial application, it should be considered, when documents are first circulated, whether they really need to be protected (LIMITE code) or whether it might not be better to make them public as soon as they are issued.

11. Access refused following an initial application

If examination of the document leads to the conclusion that one or more of the exceptions provided for apply, access to the document is refused.

Reasons must be given for any refusal, bearing in mind the following criteria:

- It is not sufficient to state that the document is classified or that it concerns a politically sensitive subject that requires a degree of confidentiality; a detailed argument should be developed, on the basis of the document's content, to make the case for applying the exceptions referred to in Article 4 of Regulation 1049/2001³⁷;
- In line with the relevant case law³⁸, these exceptions should be interpreted and applied strictly, in a manner which does not defeat the application of the general principle of public access to documents;
- If the exceptions are to apply, the risk of any of the interests they protect being undermined must be reasonably foreseeable and not purely hypothetical.

12. Partial access following an initial application

If the grounds for refusal concern only certain specific parts of the document requested, the possibility of granting partial access must be considered (Article 4(6) of Regulation 1049/2001), in which case the parts to be protected are deleted and access is granted to the other parts of the document.

When legislative documents in the process of being negotiated are requested, the Transparency Unit will, after consulting the directorate-general concerned³⁹:

- disclose the content of the document, including footnotes and other references to delegations' positions, but

³⁷ See Annex 7.

³⁸ See "Strict interpretation of exceptions", Chapter V.

³⁹ Pursuant to the Coreper orientation of 6 March 2002, see 6203/02, 6898/02 and 10425/03.

- delete the names of the delegations and any content that would make it possible to identify the origin of the various positions set out in the document and
- exclude the parts covered by the exceptions provided for in Article 4 of the Regulation.

For all documents entered in the register after 1 February 2004, the content of the document to which partial access has been granted becomes directly accessible to the public in the language version of the application and in English. The document references then appear in the register marked «P/A» («Partial Access»). For documents prior to 1 February 2004, a copy of the partial version of the document or another language version may be obtained from the GSC on request.

REMINDER: structure of documents with a view to partial access

The possibility of partial access should be borne in mind when producing documents, and they should be structured accordingly – while keeping to drafting quality requirements – for example:

- the parts to be protected can be concentrated in annexes or other easily detachable parts.
- if delegations submit written comments on a proposal that is under examination, the names of the delegations can be indicated in the body of the text – rather than in the document title or heading – so that the contents of the document can be disclosed while blocking out the names of the delegations which have submitted comments.
- when producing progress reports on a proposal which is under examination, delegations' comments/suggestions can be given in the footnotes.

13. Confirmatory applications

In the event of total or partial refusal, the applicant may, within 15 working days of receiving the GSC's reply, make a confirmatory application for the Council to reconsider the GSC's position⁴⁰. If there is no response within the required time limit – failure to reply being counted as refusal – the applicant may lodge a complaint with the European Ombudsman and/or take legal action against the institution⁴¹.

As with initial applications, confirmatory applications should be processed promptly, within a time limit of 15 working days from registration of the application. By way of exception, this period may also be extended by 15 further working days.

The procedure is as follows:

- The Transparency Unit sends delegations an information note: this contains the initial application, the GSC's reply to the initial application and the confirmatory application. The delegations are also sent the documents applied for. If the documents are classified, delegations are requested to refer to their archives or consult them at the GSC. Depending on the circumstances, sending them by envelope may also be considered.

⁴⁰ Article 7(2) of Regulation 1049/2001.

⁴¹ The Ombudsman's statute prevents him from dealing with complaints which are simultaneously the subject of legal action in the General Court.

- In a second mailing, the Transparency Unit sends delegations:
 - a draft reply⁴² to the confirmatory application prepared in collaboration with the Legal Service, containing the opinion of the directorate-general from which the document applied for originated;
 - a table on which delegations can make known their positions on the draft reply. Delegations are asked to inform the GSC of their positions before the meeting of the Working Party on Information.
- The draft reply is examined by the Working Party on Information, which generally meets every fortnight. The Working Party gives its opinion within the deadlines set by Regulation 1049/2001.
- After the Working Party has approved the draft, the item is entered on Coreper's agenda as an «I» item and then on the Council's agenda as an A item. The decision, which is taken by simple majority, is taken exclusively by the Council. The results of the vote and explanations of votes may be made public by decision of the Council (also by simple majority), at the request of a delegation⁴³. In practice, the chairman of the Working Party on Information asks delegations which have provided explanations of their votes if they can be made public and if the outcome of the vote can also be made public. In most cases, replies are in the affirmative. The explanations of votes will then be included in the «I/A» item note.
- The Council's letter of reply is sent to the applicant within 15 working days (or 30, if the deadline is extended) as stipulated in the Regulation. If access to the document applied for is either wholly or partially refused, he is notified by the same letter that he may lodge a complaint with the European Ombudsman and/or bring legal proceedings against the institution.

42 See sample letter in Annex 8.

43 Article 9 of the CRP.

Appeals

1. Complaints to the European Ombudsman⁴⁴

Only applicants for access who are citizens of the Union or natural or legal persons residing or having their registered offices in an EU Member State may lodge a complaint with the Ombudsman.

The Ombudsman is empowered to receive complaints concerning instances of maladministration in the activities of EU institutions and bodies. His decisions are not legally binding.

The Ombudsman informs the Council of the complaints referred to him and invites it to send him its opinion by a date indicated by him (no later than 3 months after the Ombudsman's letter is sent to the Council).

REMINDER: the Ombudsman's statute

Article 3(2) of the statute of the Ombudsman (OJ L 189, 17.7.2008, p. 25) provides that:

«The Community institutions and bodies shall be obliged to supply the Ombudsman with any information he has requested of them and give him access to the files concerned. Access to classified information or documents, in particular to sensitive documents within the meaning of Article 9 of Regulation (EC) No 1049/2001, shall be subject to compliance with the rules on security of the Community institution or body concerned.

The institutions or bodies supplying classified information or documents as mentioned in the previous subparagraph shall inform the Ombudsman of such classification.

For the implementation of the rules provided for in the first subparagraph, the Ombudsman shall have agreed in advance with the institution or body concerned the conditions for treatment of classified information or documents and other information covered by the obligation of professional secrecy.

The institutions or bodies concerned shall give access to documents originating in a Member State and classed as secret by law or regulation only where that Member State has given its prior agreement.

They shall give access to other documents originating in a Member State after having informed the Member State concerned.

In both cases, in accordance with Article 4, the Ombudsman may not divulge the content of such documents.

[...]»

On the basis of the Council's opinion and on conclusion of his enquiry (during which the Ombudsman may also ask the Council if he can inspect the document(s) which are the subject of the complaint), the Ombudsman may:

- close the case, if he believes no maladministration was involved;
- achieve an amicable solution with both parties;
- or formulate a draft Recommendation inviting the Council to re-examine its decision in the light of his recommendations and to send him a detailed opinion.

⁴⁴ Article 228 TFEU.

The Council has 3 months to provide a detailed opinion. If the Council does not agree to the Recommendation, the Ombudsman may submit a special report to the European Parliament, which may decide to adopt a resolution.

In practice, draft replies to the Ombudsman on complaints relating to access to documents follow the same course as draft replies to confirmatory applications.

2. Essential elements of the Ombudsman's decisions

The European Ombudsman has taken decisions on a large number of cases concerning access to documents. Generally speaking, his decisions follow the case law referred to below. Two decisions are worth highlighting:

- **Non-existent documents:** Regulation 1049/2001 does not require institutions to create documents to fulfil their obligations under that Regulation⁴⁵. Hence, they are not required to produce reports or statistics which they had not thought worth producing before.
- **Overriding public interest (Article 4(2) of Regulation 1049/2001):** It is for the complainant to prove that there is a public interest in disclosure which overrides the prejudice likely to be caused. The fact that a document was drawn up many years earlier is not in itself sufficient to prove that there is an overriding public interest in disclosure⁴⁶.

3. Court proceedings

The applicant may also bring proceedings for annulment in the European Union court with jurisdiction in such matters, i.e. the General Court (previously «Court of First Instance of the European Communities») within two months of notification of the refusal of access to a document⁴⁷.

The General Court has the right to ask the Council to produce the documents concerned, without however transferring them to the other party, in order to determine whether, in refusing access, the Council has committed a manifest error of judgment⁴⁸. If the General Court annuls the decision which the Council took following the confirmatory application, the GSC prepares a new draft reply, taking account of the Court's judgment. This draft goes through all the steps of the confirmatory stage described above in order to arrive at a new Council decision.

It should be noted that the General Court's judgments may be appealed before the Court of Justice.

FOR INFORMATION: thrust of case law on access to documents

Since 1995, the General Court has totally or partially annulled around half of the decisions to refuse access taken by the Council or the Commission which were appealed.

Certain judgments in which the General Court rejected appeals from individuals against particular decisions by the institutions were overturned by the Court of Justice on appeal.

⁴⁵ Decision of the European Ombudsman on complaint 1015/2002(PB) IJH against the Council as well as that on complaint 1184/2002/PB against the Commission.

⁴⁶ Decision of the European Ombudsman on complaint 412/2003/GG against the Commission.

⁴⁷ Article 263 TFEU.

⁴⁸ Article 67(3) of the Rules of Procedure of the General Court.

4. Essential elements of case law

The large body of case law of the Court of Justice and the General Court on public access to documents shows the need to apply the transparency rules rigorously and consistently⁴⁹.

The provisions of Regulation 1049/2001 should be interpreted in the light of the essential elements of existing case law indicated below:

- **Principle that citizens should have the broadest possible access to documents:** The provisions of EU law on access to documents are designed to give effect to this principle, with a view to strengthening the democratic nature of the institutions and public confidence in the administration⁵⁰.
- **Obligation to state reasons:** The European courts have insisted on the institutions being required to state reasons for their individual decisions in accordance with Article 296 of the TFEU (formerly Article 253 of the TEC). This obligation to state reasons has the twofold objective of informing interested parties of the justification for the decision taken so that they can protect their rights and of enabling the European judiciary to exercise its power to review the legality of the decision⁵¹. Whether or not a statement of reasons satisfies those requirements is a question to be assessed with reference not only to its wording but also to its context and the whole body of legal rules on the matter⁵². If the institution has, in a decision of refusal, omitted to refer to the applicable exception on which that refusal is based, it can no longer rely upon it before the General Court⁵³.

The obligation to state reasons does not, however, mean that the institutions are required in all cases to furnish, in respect of each document, «imperative reasons» to justify the application of the public-interest exception and thereby risk jeopardising the essential function of the exception in question. Reasons justifying the need for confidentiality in respect of each document must not compromise the protection of the content of the document, thereby depriving the exception of its very purpose⁵⁴.

- **Direct application of Treaty clauses:** The second paragraph of Article 1 TEU and Article 255 TEC (Article 15(3) TFEU following the entry into force of the Treaty of Lisbon) are not directly applicable⁵⁵. Consequently, the provisions of the Treaties cannot be relied upon in court proceedings.

49 Judgment of the Court of Justice in the joined Netherlands and Van der Wal v. Commission cases, C-174/98 P and C-189/98 P, ECR 2000, p. I-1; the judgment in Mattila v. Council and Commission, C-353/01 P, ECR 2004, p. I-1073. The order in Pitsiorlas v. Council and ECB, T-3/00, ECR 2001, p. II-717, was annulled by the Court of Justice in its judgment of 15 May 2003 in Pitsiorlas v. Council and ECB, C 193/01P, ECR 2003, p. I-4837.

50 Judgment in Svenska Journalistförbundet v. Council, T-174/95, ECR 1998, p. II-2289, point 66.

51 Judgments in WWF UK v. Commission, T-105/95, ECR 1997, p. II-313, point 66, Interporc v. Commission, T 124/96, ECR 1998, p. II-231, point 53, Svenska Journalistförbundet, above, point 116, Kuijer v. Council, T 188/98, ECR 2000, p. II-1959, point 36, and JT's Corporation v. Commission, T 123/99, ECR 2000, p. II 3269, point 63, Pitsiorlas v. Council and ECB, T-3/00 and T-337/04, ECR 2007, p. II-4779, point 261.

52 Judgments of the Court of First Instance in the abovementioned cases of Kuijer v. Council, point 36, and JT's Corporation v. Commission, point 63.

53 Judgments in the abovementioned WWF UK v. Commission case, point 71, and the judgment of the Court of Justice in the Interporc v. Commission case, C-41/00 P, ECR 2003, p. I-2125, point 55.

54 Judgments in the abovementioned WWF UK v. Commission case, point 65. See also the Court of First Instance order in the Norup Carlsen v. Council case, T-610/97 R, ECR 1998, p. II-485, point 39, and the judgment in the Sisón v. Council case, C-266/05 P, ECR 2007, p. I-01233, points 81 and 82.

55 Sisón v. Council, C-266/05 P, ECR 2007, p. I-01233.

- **Principle of a general right of access:** Regulation 1049/2001 is designed to implement the principle of a general right of access laid down in Article 255 TEC (Article 15(3) of the TFEU following the entry into force of the Treaty of Lisbon), by laying down the conditions and limits which, for reasons of public or private interest, govern the exercise of this right. The European courts consider that the provisions of EU law on transparency grant citizens a right of access to documents held by the institutions without their being required to provide reasons for their applications⁵⁶. An institution cannot be criticised for failing to take into account the applicant's particular interests.
- **General and specific rights of access:** A clear distinction should be drawn between the general right of access under Regulation 1049/2001 and the specific rights of access under other legal instruments which grant given persons a privileged right of access to documents which cannot be made public⁵⁷. Under these specific rules, access is most often subject to particular conditions and procedures which strike a delicate balance between the rights of the defence and the need to ensure that procedures remain effective.
- **Individual examination of documents:** A decision to reject an application must be based on a genuine examination of the particular circumstances of the case⁵⁸. The institutions are required to consider in respect of each requested document whether, in the light of the information available to them, disclosure is in fact likely to undermine one of the facets of public interest protected by the arrangements for exceptions contained in Article 4(1), (2) or (3)⁵⁹. The reasons given for a decision refusing access to documents should – at the very least for each category of documents concerned – contain the specific reasons for which the institution concerned considers that disclosure of the requested documents falls under one of the exceptions provided for⁶⁰.
- **Restrictive interpretation of exceptions:** A decision denying access is valid only if it is based on one of the exceptions provided for in the Regulation⁶¹. The exceptions should be interpreted and applied strictly, in a manner which does not defeat the application of the general principle of access to documents for citizens⁶². If those exceptions are to apply, the risk of the public interest being undermined must therefore be reasonably foreseeable and not purely hypothetical⁶³.
- **Public-interest exception (Article 4(1)(a)):** When an institution decides that access to a document could, in its view, undermine the public interest, it exercises a discretion included among the political responsibilities conferred on it by the Treaties. In those circumstances, review by the General Court must be limited to verifying whether the procedural rules have been complied with, the decision at issue is properly reasoned and the facts have been accurately stated, and whether there has been a manifest error of assessment of the facts or a misuse of powers⁶⁴.

56 Judgments of the Court of First Instance in *WWF UK v. Commission*, above, point 55, *Svenska Journalistförbundet v. Council*, above, point 109, and *BAT International v. Commission*, T-111/00, ECR 2001, p. II-2997, point 42.

57 Articles 27, 28 and 30 of Regulation (EC) No 1/2003 (competition), Article 6(7) and Article 14(2) of Regulation (EC) No 384/96 (antidumping), Article 11(7) and Article 24(2) of Regulation (EC) No 2026/97 (anti-subsidy measures) and Article 6(2) of Regulation (EC) No 3285/94 (safeguards).

58 Judgment in *Co-Frutta v. Commission*, T-355/04 and T-446/04, (not yet published), points 122-124.

59 See in the context of the rules prior to the Regulation, the above judgments in *Svenska Journalistförbundet v. Council*, point 112, *Kuijjer v. Council*, point 36, *JT's Corporation*, point 64, and *Petrie v. Commission*, point 78.

60 Judgment in *WWF UK v. Commission*, above, points 64 and 74.

61 See in the context of the rules prior to the Regulation, *Kuijjer v. Council*, T-211/00, ECR 2002, p. II 485, point 55.

62 Judgment in the *WWF v. Commission* case above, point 56, as well as the above cases *Netherlands and van der Wal v. Commission*, point 27, and *Council v. Hautala*, C-353/99 P, ECR 2001, p. I 9565, point 25.

63 *Kuijjer v. Council*, T-211/00, above, point 56, judgment in *My Travel v. Commission*, T 403/05, ECR p. II-2027, point 73.

64 *Ibid.*, point 53. See also *Hautala v. Council*, above, points 71 and 72.

- **Exception concerning court proceedings and legal advice (second indent of Article 4(2)):** The exception relating to legal advice aims to protect an institution's interest in requesting legal advice and in receiving frank, objective and comprehensive advice⁶⁵. When the Council acts in its legislative capacity, greater transparency is required with regard to opinions of the Council Legal Service⁶⁶. However, the institution is entitled to refuse access to a legal opinion forming part of a legislative procedure if it is of a particularly sensitive nature or has a particularly wide scope that goes beyond the legislative process in question⁶⁷.

The exception concerning court proceedings, which covers documents drafted solely for the purpose of a specific court proceeding, is to ensure observance of the right of every person to a fair hearing by an independent tribunal and to guarantee the proper conduct of the proceedings⁶⁸.

- **Exception concerning protection of the objectives of investigations (third indent of Article 4(2)):** In order to justify refusing access to a document, it is not sufficient, in principle, for the document to fall within an activity covered by an exception under the Regulation, such as an investigation. The institution to which application is made must also supply explanations as to how access to the document could specifically and effectively undermine such activity. However, where there is a presumption of confidentiality, as is the case with procedures for reviewing State aid where the sectoral legislation does not lay down any right of access to documents in the administrative file for interested parties other than the Member State concerned, the Court considers that the institution concerned may refuse access to all the documents relating to that procedure without first carrying out a concrete, individual examination of those documents⁶⁹.
- **Exception concerning protection of privacy and the integrity of the individual (Article 4(1)(b)):** In its first ruling on the interpretation of Article 4(1)(b) of Regulation 1049/2001, the Court of Justice held that this provision is indivisible and requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, in particular with Regulation 45/2001. Thus, Article 4(1)(b) of Regulation 1049/2001 establishes a specific and reinforced system of protection of a person whose personal data could, in certain cases, be communicated to the public. It follows that, where a request based on Regulation 1049/2001 seeks to obtain access to documents including personal data, the provisions of Regulation 45/2001 become applicable in their entirety, including Articles 8 and 18 thereof⁷⁰.

65 Judgment in *Sweden and Turco v. Council*, C-39/05 P and C-52/05 P, ECR 2008 p. I-4723, point 42.

66 Judgment in *Sweden and Turco v. Council*, above, points 67 and 68.

67 Judgment in *Sweden and Turco v. Council*, C-39/05 P and C-52/05 P, ECR 2008, p. I-4723.

68 Judgment in *API v. Commission*, T-36/04, ECR II-3201, points 60 and 63.

69 Judgment in *Technische Glaswerke Ilmenau case*, C-139/07 P, points 53-63.

70 Judgment of the Court of Justice in *Commission v. Bavarian Lager*, C-28/08 P, points 59-63.

- **Documents originating from Member States (Article 4(5)):** When a document originates from a Member State (that is to say that the document does not fall within the Member State's activities in its capacity as a member of the Council), Article 4(5) of the Regulation gives that Member State a form of prior assent confirming that none of the grounds of exception under Article 4(1) to (3) of the Regulation is present. While the institution is, in principle, required to abide by any refusal by that Member State, the latter has an obligation to give reasons for its refusal, based on the exceptions set out in Article 4(1) to (3) of the Regulation⁷¹. It should, however, be noted that most documents submitted by delegations during discussions in the Council's various preparatory bodies are to be considered as documents of a member of the Council and, in that case, the rules on documents originating from third parties do not apply.
- **Partial access (Article 4(6)):** The institution is required to examine whether partial access may be granted⁷².

71 Sweden and IFAW v. Commission, C-64/05 P, ECR 2007, p. I-11389, point 76.

72 Above judgments Hautala v. Council, point 87, and Kuijter v. Council, T-188/98, point 54. This case law was expressly confirmed by the Court of Justice in its judgments in the Council v. Hautala case, C-353/99 P, points 27 and 31, and in the Mattila v. Council and Commission case, C 353/01 P, points 29-32, and also gave rise to Article 4(6) of Regulation 1049/2001.

Access to documents which are over 30 years old – the Council archives

The general principles and the limits governing the public's right of access to documents of the European Parliament, the Council and the Commission were laid down in Regulation 1049/2001, irrespective of the document's age. However, because of the specific nature of documents that are more than 30 years old, the procedures for access to them were clarified by Regulation (EC, EURATOM) No 354/83⁷³, Article 1 of which lays down that:

«Each institution ... shall establish its historical archives and open them to the public on the terms provided for by this Regulation after the expiry of a period of 30 years starting from the date of the creation of the document».

1. Council archives

The purpose of the Council archives – known as Central Archives – is to form the collective memory of the Council and of other bodies for which the GSC is document depository, such as the European Councils⁷⁴, the Intergovernmental Conferences (revisions of the Treaties/enlargements) and the European Convention.

The Central Archives establish and preserve a collection of documents produced and received by the institution and enable authorised persons to have access to it. The service permanently stores these documents and administrative documents of historical value. Documents of merely administrative value are kept for fixed periods.

The Central Archives:

- preserve documents for the long term, regardless of medium (paper, electronic, photographic, audio or video);
- give an archival description of the documents in line with international standards;
- facilitate access to the collections through the provision of reading media and a database to facilitate research ("CASE" search module⁷⁵).

The Central Archives manages the current archives (documents under 30 years old) and historical archives (documents over 30 years old). The originals of the historical archives are deposited at the European University Institute (EUI) in Florence. A set of copies is kept at the Council on microfiche. Sets of microform copies can be provided to Member States and other EU institutions on request.

73 Article 1 of Regulation (EEC, Euratom) No 354/83 concerning the opening to the public of the historical archives of the European Article 1 of Regulation (EEC, Euratom) No 354/83 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1), as amended by Council Regulation (EC, Euratom) No 1700/2003 (OJ L 243, 27.9.2003, p. 1).

74 Before the entry into force of the Lisbon Treaty, which established the European Council as an institution.

75 See 3 below.

2. Document transmission to the Central Archives

The purposes of Staff Note No 187/08 of 21.11.2008⁷⁶ on «Document transmission to Central Archives and file disposal» were:

- to ensure that mail, ST, CM and DS documents and work files are transmitted to the Archives;
- to set up a controlled disposal procedure (using a document disposal form);
- to make it possible to retrieve the documents needed for permanent storage.

3. Searching the archives

The Central Archives intranet site gives information on the organisation of the archives, the procedures for depositing archives, loans of files and consultation of historical archives.

It also gives access to an online search module («Central Archives Search Engine», or «CASE»), which makes it possible to search the archive database. This search module makes it possible to find files, link all documents relating to a file and display them on screen.

It can be accessed via Domus: DGs and Services, DG F, Archives centrales – Recherche – CASE; or via Internet at the following address:

<http://www.consilium.europa.eu/>, «Documents» tab, Archives, Case

4. Handling applications for access to documents over 30 years old

The Central Archives publishes inventories of documents more than 30 years old which become available to the public under the rules in force. These inventories can be consulted:

- in the GSC's Central Archives offices;
- at the archive locations of other EU institutions;
- at the archives of Member States' Ministries of Foreign Affairs;
- at the EUI in Florence, official depository for the originals of all documents more than 30 years old.

The historical archives team is responsible for processing applications for access to documents more than 30 years old. The application may be sent to that team by normal mail, e-mail (archives.centrales@consilium.europa.eu) or fax to +32 (0) 2 281 81 24.

Once the documents in question have been identified, Central Archives staff send a copy by mail to the applicant or, if the application covers a very large number of documents, invites the applicant to consult the requested documents on paper or microfiche in the Council's archives.

The consultation room is located on Level 05 (05-70-FL-56) of the Justus Lipsius building (Belliard entrance). It is accessible to the public on working days from 9.00 to 16.30⁷⁷.

Documents kept in the historical archives are accessible to the public under the conditions set out in Regulation (EC, Euratom) No 1700/2003. Under that Regulation, exceptions may apply beyond the 30-year period in matters relating to:

- the protection of the privacy and the integrity of the individual⁷⁸;
- the protection of commercial interests of a natural or legal person, including intellectual property⁷⁹;
- sensitive documents, if not yet declassified;
- documents classified in accordance with Article 10 of Council Regulation No 3 of 31 July 1958 (if not yet declassified).

77 See procedures established by Decision No 1044/99 of the Secretary-General of the Council concerning the opening to the public of the historical archives of the Council. See Annex 11.

78 Article 4(1)(b) of Regulation (EC) No 1049/2001.

79 Article 4(2), first indent, of Regulation (EC) No 1049/2001.

Other aspects of transparency: public access to Council proceedings

REMINDER: when the Council meets in public

The proceedings of the Council are public when:

- it deliberates and votes on a draft legislative act (Article 16(8) TEU). To this end, each Council meeting is divided into two parts, dealing respectively with deliberations on legislative acts and with non-legislative activities;
- it conducts its initial deliberations on non-legislative “important new proposals” concerning the adoption of rules that are legally binding in or for Member States. It is for the Presidency to determine what the “important new proposals” are, but the Council or Coreper can decide otherwise (Article 8(1) of the CRP);
- it holds debates on important issues affecting the interests of the EU and of its citizens, by decision of the Council or Coreper, acting by qualified majority (Article 8(2) of the CRP);
- its General Affairs configuration holds a debate on the Council’s 18-month programme and its other configurations hold debates on the priorities specific to their fields. The Commission’s presentation of its five-year programme, of its annual work programme and of its annual policy strategy, as well as the ensuing debates in the Council, are also public (Article 8(3) of the CRP).

1. Openness of Council meetings⁸⁰

The opening to the public of Council meetings – the «legislative deliberations» part and/or items on the agenda marked «public deliberation» or «public debate» – is made through public transmission on audiovisual media in a listening room and by broadcast in all EU official languages via video streaming at <http://video.consilium.europa.eu> (telephone: +32 (0)2 281 44 77, e-mail address: public.records@consilium.europa.eu). The recording is available for at least one month on the Council’s video streaming page. Older videos are available on cassette in the Council’s audiovisual archives.

2. Automatic publication of votes, explanations of votes, minutes and statements

Votes and explanations of votes, as well as the minutes and statements attached thereto, are automatically made public in the following cases:

- where a legislative deliberation is followed by a vote⁸¹;

⁸⁰ Articles 7 and 8 of the CRP.

⁸¹ Article 7(1) of the CRP.

- in the context of the ordinary legislative procedure at Conciliation Committee level⁸²;
- where they concern non-legislative acts relating to the adoption of rules which are legally binding in or for Member States, except for internal measures, administrative or budgetary acts, acts concerning interinstitutional or international relations or non-binding acts (such as conclusions, recommendations or resolutions)⁸³;

In the legislative procedure, the outcome of the vote is indicated visually in the room in which the Council is meeting and in the press room and on the Internet. Results and explanations of votes are also published in the final press release.

3. Publication of votes, explanations of votes, minutes and statements requiring an ad hoc decision

A unanimous Council or Coreper decision, taken at the request of one of their members, is necessary to make public the outcomes of votes when the Council acts in the CFSP framework (Title V TEU)⁸⁴.

In all other cases, a Council or Coreper decision by simple majority taken at the request of one of their members is required⁸⁵.

When the results of the abovementioned votes are made public, the explanations of votes are also made public at the request of the Council members concerned, with due respect for the CRP, legal certainty and the interests of the Council, by decision taken by simple majority.

Statements entered in the Council minutes and items in the minutes relating to the adoption of the acts in question are also made public by Council or Coreper decision, taken by simple majority, at the request of one of their members.

4. Means of public access and circulation

The GSC makes the results of votes available via the Council's Internet site.

The items adopted by the Council when it acts in its legislative capacity are the subject of addenda to the draft minutes and are directly accessible (<http://www.consilium.europa.eu>, under «Documents/Legislative Transparency/Council minutes»).

The Public Records of Proceedings service prepares monthly lists of legislative and non-legislative acts adopted by the Council, which include the results of votes, the voting rules and the statements in the minutes, when the Council acts in its legislative capacity. The monthly lists may be consulted on the Council's Internet site (<http://www.consilium.europa.eu>, under «Documents/Legislative Transparency/Summary of Council acts»).

⁸² Article 7(4) of the CRP.

⁸³ Article 8(1) and Article 9(1) of the CRP.

⁸⁴ Article 9(2)(a) of the CRP.

⁸⁵ Article 9(2)(b) of the CRP.

Requests for information from the public

«Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 13 of the Treaty on European Union in one of the languages mentioned in Article 55(1) of the Treaty on European Union and have an answer in the same language.»⁸⁶

1. The code of good administrative behaviour

In order that the Treaty's openness and transparency provisions be fully complied with in daily practice, guidelines for GSC staff's professional relations with the public were adopted in 2001 in the form of a code of good administrative behaviour .

This Code applies to all members of staff of the GSC in their professional relations with the public, except where these are governed by specific rules, as is the case for access to documents and public tendering procedures.

Under the Code, staff are required, in dealing with requests and in their responses to them, to comply with the following principles:

- non-discrimination (equality of treatment for persons in the same situation);
- fairness, loyalty and neutrality;
- courtesy;
- drafting of replies in the language of the application, if it is an EU official language. If the application is made in a different language, in reply the applicant should be asked to write the application in one of the official languages. In that situation, the most commonly used language is English, though another language may be used, depending on the applicant's country of origin.

GSC officials must provide the requested information clearly and comprehensibly or direct the citizen to the appropriate source. If the requested information cannot be disclosed, the citizen must be notified of this in a clear manner, with an explanation of the reasons for the refusal.

The time limit for replying is 15 working days from the date of receipt of the application. Where a reasoned reply cannot be provided within that deadline, the correspondent must be informed thereof and a definitive reply sent to him as soon as possible.

However, no reply need be provided where:

- an excessive number of identical letters or requests has been received (for example, circulars concerning a particular event);
- a reply has already been given to the same request coming from the same person;
- the request is of an improper nature.

⁸⁶ Fourth paragraph of Article 24 TFEU.

Regarding personal data, GSC staff must comply with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (Article 11 of the Code of good administrative behaviour).

2. The Public Information Unit

Most general requests for information addressed to the GSC by citizens are dealt with by DG F's Public Information Unit, in accordance with the provisions of the code of good administrative behaviour.

Colleagues receiving such requests for information are requested, if they reply themselves, to copy their replies to the Public Information Unit. If they are not able to reply themselves, they are invited to forward the request for information to the Public Information Unit by:

- internal mail: Public Information Unit, office 00.50.GH 32
- e-mail (internal use): public.info2@consilium.europa.eu
- Tel.: +32 (0)2 281 56 50
- fax: +32 (0)2 281 49 77

Citizens may address their requests for information to the Public Information Unit by post, fax, telephone, or using an electronic form available at www.consilium.europa.eu/infopublic.

If the Public Information Unit does not have all the information needed to respond to an application, it will contact the department responsible for the area that the request concerns. In order for the Public Information Unit to be able to provide a response in good time, the colleagues whom it contacts should provide the information requested as quickly as possible.

DG F

ANNEXES

**REGULATION (EC) No 1049/2001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 30 May 2001
regarding public access to European Parliament, Council and Commission documents**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 255(2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Acting in accordance with the procedure referred to in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) The second subparagraph of Article 1 of the Treaty on European Union enshrines the concept of openness, stating that the 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.
- (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 to the citizen in a democratic system. Openness contributes to strengthening the principles of democracy and respect for fundamental rights as laid down in Article 6 of the EU Treaty and in the Charter of Fundamental Rights of the European Union.
- (3) The conclusions of the European Council meetings held at Birmingham, Edinburgh and Copenhagen stressed the need to introduce greater transparency into the work of the Union institutions. This Regulation consolidates the initiatives that the institutions have already taken with a view to improving the transparency of the decision-making process.
- (4) The purpose of this Regulation is to give the fullest possible effect to the right of public access to documents and to lay down the general principles and limits on such access in accordance with Article 255(2) of the EC Treaty.
- (5) Since the question of access to documents is not covered by provisions of the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community, the European Parliament, the Council and the Commission should, in accordance with Declaration No 41 attached to the Final Act of the Treaty of Amsterdam, draw guidance from

this Regulation as regards documents concerning the activities covered by those two Treaties.

- (6) Wider access should be granted to documents in cases where the institutions are acting in their legislative capacity, including under delegated powers, while at the same time preserving the effectiveness of the institutions' decision-making process. Such documents should be made directly accessible to the greatest possible extent.
- (7) In accordance with Articles 28(1) and 41(1) of the EU Treaty, 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. Each institution should respect its security rules.
- (8) In order to ensure the full application of this Regulation to all activities of the Union, all agencies established by the institutions should apply the principles laid down in this Regulation.
- (9) On account of their highly sensitive content, certain documents should be given special treatment. Arrangements for informing the European Parliament of the content of such documents should be made through interinstitutional agreement.
- (10) In order to bring about greater openness in the work of the institutions, access to documents should be granted by the European Parliament, the Council and the Commission not only to documents drawn up by the institutions, but also to documents received by them. In this context, it is recalled that Declaration No 35 attached to the Final Act of the Treaty of Amsterdam provides that a Member State may request the Commission or the Council not to communicate to third parties a document originating from that State without its prior agreement.
- (11) In principle, all documents of the institutions should be accessible to the public. However, certain public and private interests should be protected by way of exceptions. The institutions should be entitled to protect their internal consultations and deliberations where necessary to safeguard their ability to carry out their tasks. In assessing the exceptions, the institutions should take account of the principles in Community legislation concerning the protection of personal data, in all areas of Union activities.
- (12) All rules concerning access to documents of the institutions should be in conformity with this Regulation.

⁽¹⁾ OJ C 177 E, 27.6.2000, p. 70.

⁽²⁾ Opinion of the European Parliament of 3 May 2001 (not yet published in the Official Journal) and Council Decision of 28 May 2001.

- (13) In order to ensure that the right of access is fully respected, a two-stage administrative procedure should apply, with the additional possibility of court proceedings or complaints to the Ombudsman.
- (14) Each institution should take the measures necessary to inform the public of the new provisions in force and to train its staff to assist citizens exercising their rights under this Regulation. In order to make it easier for citizens to exercise their rights, each institution should provide access to a register of documents.
- (15) Even though it is neither the object nor the effect of this Regulation to amend national legislation on access to documents, it is nevertheless clear that, by virtue of the principle of loyal cooperation which governs relations between the institutions and the Member States, Member States should take care not to hamper the proper application of this Regulation and should respect the security rules of the institutions.
- (16) This Regulation is without prejudice to existing rights of access to documents for Member States, judicial authorities or investigative bodies.
- (17) 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. 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⁾, European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents ⁽³⁾, and the rules on confidentiality of Schengen documents should therefore, if necessary, be modified or be repealed,

HAVE ADOPTED THIS REGULATION:

Article 1

Purpose

The purpose of this Regulation is:

- (a) to define the principles, conditions and limits on grounds of public or private interest governing the right of access to European Parliament, Council and Commission (hereinafter referred to as 'the institutions') documents provided for in Article 255 of the EC Treaty in such a way as to ensure the widest possible access to documents,

⁽¹⁾ OJ L 340, 31.12.1993, p. 43. Decision as last amended 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.

- (b) to establish rules ensuring the easiest possible exercise of this right, and
- (c) to promote good administrative practice on access to documents.

Article 2

Beneficiaries and scope

- Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.
- The institutions may, subject to the same principles, conditions and limits, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.
- This Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union.
- Without prejudice to Articles 4 and 9, documents shall be made accessible to the public either following a written application or directly in electronic form or through a register. In particular, documents drawn up or received in the course of a legislative procedure shall be made directly accessible in accordance with Article 12.
- Sensitive documents as defined in Article 9(1) shall be subject to special treatment in accordance with that Article.
- This Regulation shall be without prejudice to rights of public access to documents held by the institutions which might follow from instruments of international law or acts of the institutions implementing them.

Article 3

Definitions

For the purpose of this Regulation:

- (a) 'document' shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility;
- (b) 'third party' shall mean any natural or legal person, or any entity outside the institution concerned, including the Member States, other Community or non-Community institutions and bodies and third countries.

*Article 4***Exceptions**

1. The institutions shall refuse access to a document where disclosure would undermine the protection of:

- (a) the public interest as regards:
- public security,
 - defence and military matters,
 - international relations,
 - the financial, monetary or economic policy of the Community or a Member State;
- (b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

2. The institutions shall refuse access to a document where disclosure would undermine the protection of:

- commercial interests of a natural or legal person, including intellectual property,
- court proceedings and legal advice,
- the purpose of inspections, investigations and audits,

unless there is an overriding public interest in disclosure.

3. Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

4. As regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed.

5. A Member State may request the institution not to disclose a document originating from that Member State without its prior agreement.

6. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.

7. The exceptions as laid down in paragraphs 1 to 3 shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. In the case of documents covered by the exceptions relating to privacy or commercial interests and in the case of sensitive documents,

the exceptions may, if necessary, continue to apply after this period.

*Article 5***Documents in the Member States**

Where a Member State receives a request for a document in its possession, originating from an institution, unless it is clear that the document shall or shall not be disclosed, the Member State shall consult with the institution concerned in order to take a decision that does not jeopardise the attainment of the objectives of this Regulation.

The Member State may instead refer the request to the institution.

*Article 6***Applications**

1. Applications for access to a document shall be made in any written form, including electronic form, in one of the languages referred to in Article 314 of the EC Treaty and in a sufficiently precise manner to enable the institution to identify the document. The applicant is not obliged to state reasons for the application.

2. If an application is not sufficiently precise, the institution shall ask the applicant to clarify the application and shall assist the applicant in doing so, for example, by providing information on the use of the public registers of documents.

3. In the event of an application relating to a very long document or to a very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution.

4. The institutions shall provide information and assistance to citizens on how and where applications for access to documents can be made.

*Article 7***Processing of initial applications**

1. An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. Within 15 working days from registration of the application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal and inform the applicant of his or her right to make a confirmatory application in accordance with paragraph 2 of this Article.

2. In the event of a total or partial refusal, the applicant may, within 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.

3. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time-limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

4. Failure by the institution to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.

Article 8

Processing of confirmatory applications

1. A confirmatory application shall be handled promptly. Within 15 working days from registration of such an application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal. In the event of a total or partial refusal, the institution shall inform the applicant of the remedies open to him or her, namely instituting court proceedings against the institution and/or making a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively.

2. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

3. Failure by the institution to reply within the prescribed time limit shall be considered as a negative reply and entitle the applicant to institute court proceedings against the institution and/or make a complaint to the Ombudsman, under the relevant provisions of the EC Treaty.

Article 9

Treatment of sensitive documents

1. Sensitive documents are documents originating from the institutions or the agencies established by them, from Member States, third countries or International Organisations, classified as 'TRÈS SECRET/TOP SECRET', 'SECRET' or 'CONFIDENTIEL' in accordance with the rules of the institution concerned, which protect essential interests of the European Union or of one or more of its Member States in the areas covered by Article 4(1)(a), notably public security, defence and military matters.

2. Applications for access to sensitive documents under the procedures laid down in Articles 7 and 8 shall be handled only by those persons who have a right to acquaint themselves with those documents. These persons shall also, without prejudice to Article 11(2), assess which references to sensitive documents could be made in the public register.

3. Sensitive documents shall be recorded in the register or released only with the consent of the originator.

4. An institution which decides to refuse access to a sensitive document shall give the reasons for its decision in a manner which does not harm the interests protected in Article 4.

5. Member States shall take appropriate measures to ensure that when handling applications for sensitive documents the principles in this Article and Article 4 are respected.

6. The rules of the institutions concerning sensitive documents shall be made public.

7. The Commission and the Council shall inform the European Parliament regarding sensitive documents in accordance with arrangements agreed between the institutions.

Article 10

Access following an application

1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, including, where available, an electronic copy, according to the applicant's preference. The cost of producing and sending copies may be charged to the applicant. This charge shall not exceed the real cost of producing and sending the copies. Consultation on the spot, copies of less than 20 A4 pages and direct access in electronic form or through the register shall be free of charge.

2. If a document has already been released by the institution concerned and is easily accessible to the applicant, the institution may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document.

3. Documents shall be supplied in an existing version and format (including electronically or in an alternative format such as Braille, large print or tape) with full regard to the applicant's preference.

Article 11

Registers

1. To make citizens' rights under this Regulation effective, each institution shall provide public access to a register of documents. Access to the register should be provided in electronic form. References to documents shall be recorded in the register without delay.

2. For each document the register shall contain a reference number (including, where applicable, the interinstitutional reference), the subject matter and/or a short description of the content of the document and the date on which it was received or drawn up and recorded in the register. References shall be made in a manner which does not undermine protection of the interests in Article 4.

3. The institutions shall immediately take the measures necessary to establish a register which shall be operational by 3 June 2002.

*Article 12***Direct access in electronic form or through a register**

1. The institutions shall as far as possible make documents directly accessible to the public in electronic form or through a register in accordance with the rules of the institution concerned.
2. In particular, legislative documents, that is to say, documents drawn up or received in the course of procedures for the adoption of acts which are legally binding in or for the Member States, should, subject to Articles 4 and 9, be made directly accessible.
3. Where possible, other documents, notably documents relating to the development of policy or strategy, should be made directly accessible.
4. Where direct access is not given through the register, the register shall as far as possible indicate where the document is located.

*Article 13***Publication in the Official Journal**

1. In addition to the acts referred to in Article 254(1) and (2) of the EC Treaty and the first paragraph of Article 163 of the Euratom Treaty, the following documents shall, subject to Articles 4 and 9 of this Regulation, be published in the Official Journal:
 - (a) Commission proposals;
 - (b) common positions adopted by the Council in accordance with the procedures referred to in Articles 251 and 252 of the EC Treaty and the reasons underlying those common positions, as well as the European Parliament's positions in these procedures;
 - (c) framework decisions and decisions referred to in Article 34(2) of the EU Treaty;
 - (d) conventions established by the Council in accordance with Article 34(2) of the EU Treaty;
 - (e) conventions signed between Member States on the basis of Article 293 of the EC Treaty;
 - (f) international agreements concluded by the Community or in accordance with Article 24 of the EU Treaty.
2. As far as possible, the following documents shall be published in the Official Journal:
 - (a) initiatives presented to the Council by a Member State pursuant to Article 67(1) of the EC Treaty or pursuant to Article 34(2) of the EU Treaty;
 - (b) common positions referred to in Article 34(2) of the EU Treaty;

- (c) 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.

3. Each institution may in its rules of procedure establish which further documents shall be published in the Official Journal.

*Article 14***Information**

1. Each institution shall take the requisite measures to inform the public of the rights they enjoy under this Regulation.
2. The Member States shall cooperate with the institutions in providing information to the citizens.

*Article 15***Administrative practice in the institutions**

1. The institutions shall develop good administrative practices in order to facilitate the exercise of the right of access guaranteed by this Regulation.
2. The institutions shall establish an interinstitutional committee to examine best practice, address possible conflicts and discuss future developments on public access to documents.

*Article 16***Reproduction of documents**

This Regulation shall be without prejudice to any existing rules on copyright which may limit a third party's right to reproduce or exploit released documents.

*Article 17***Reports**

1. Each institution shall publish annually a report for the preceding year including the number of cases in which the institution refused to grant access to documents, the reasons for such refusals and the number of sensitive documents not recorded in the register.
2. At the latest by 31 January 2004, the Commission shall publish a report on the implementation of the principles of this Regulation and shall make recommendations, including, if appropriate, proposals for the revision of this Regulation and an action programme of measures to be taken by the institutions.

Article 18

Application measures

1. Each institution shall adapt its rules of procedure to the provisions of this Regulation. The adaptations shall take effect from 3 December 2001.
2. Within six months of the entry into force of this Regulation, the Commission shall examine the conformity of Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community ⁽¹⁾ with this Regulation in order to

ensure the preservation and archiving of documents to the fullest extent possible.

3. Within six months of the entry into force of this Regulation, the Commission shall examine the conformity of the existing rules on access to documents with this Regulation.

Article 19

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 3 December 2001.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 May 2001.

For the European Parliament

The President

N. FONTAINE

For the Council

The President

B. LEJON

Joint declaration relating to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145 of 31.5.2001, p. 43)

1. The European Parliament, the Council and the Commission agree that the agencies and similar bodies created by the legislator should have rules on access to their documents which conform to those of this Regulation. To this effect, the European Parliament and the Council welcome the Commission's intention to propose, as soon as possible, amendments to the acts establishing the existing agencies and bodies and to include provisions in future proposals concerning the establishment of such agencies and bodies. They undertake to adopt the necessary acts rapidly.
2. The European Parliament, the Council and the Commission call on the institutions and bodies not covered by paragraph 1 to adopt internal rules on public access to documents which take account of the principles and limits in this Regulation.

MEMORANDUM OF UNDERSTANDING**between the services of the European Parliament, the Council and the Commission
Referral pursuant to Article 4(4) of Council Regulation (EC) n° 1049/2001
Public access to European Parliament, Council and Commission documents**

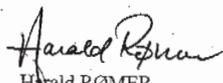
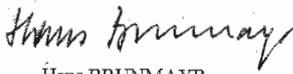
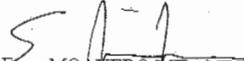
1. Article 4(4) of Regulation (EC) No 1049/2001 provides that «as regards third-party documents, the institutions shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed.» By virtue of Article 3(b) of this Regulation, the notion «third party» includes other Community institutions.
2. In order to avoid conflicting decisions by the three institutions to which Regulation (EC) No 1049/2001 applies (hereinafter «the institutions») and to ensure a swift handling of applications for documents originating from one of the institutions which are held by another institution, it is necessary to agree on the administrative procedure to be followed in such cases.
3. For these reasons, the services of the institutions agree that:
 - (a) when they receive a request for access to a document in their possession drawn up or forwarded by another institution which has not yet been made public by this institution, they will immediately inform the service of the institution concerned of that request and of their position as regards the release of the document before taking a decision;
 - (b) the services of the institution which has drawn up or forwarded the document will react swiftly and at the latest within five working days;
 - (c) in accordance with Article 9(3) of Regulation (EC) No 1049/2001, they will not release any sensitive document, as defined in that Article, without the written confirmation of the originator's consent.
 - (d) any information and requests for consultation under Article 4(4) of Regulation (EC) No 1049/2001 and this Memorandum of understanding will be addressed by e-mail or by fax to the following contact points:

European Parliament:
register@europarl.eu.int
Fax: 352-4300 22978 352-4300 22978 32.2-284 90 17

Council:
access@consilium.eu.int
Fax: 352-4300 22978 32.2-285 63 61

for the Commission:
sg-acc-doc@cec.eu.int
Fax: 352-4300 22978 32.2-296 72 42
 - (e) any change of the contact points will be notified immediately to the other institutions;
 - (f) this Memorandum of understanding may be reviewed in the light of the experience gained in its application.

Done in Brussels, the 9th of July 2002

For the European Parliament

 Harald RØMER
 Deputy Secretary-General
For the Council of the European Union

 Hans BRUNMAYR
 Deputy Director-General
For the Commission

 Enzo MOAYERO MILANESI
 Deputy Secretary-General

**REGULATION (EC) No 1367/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 6 September 2006**

on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty, in the light of the joint text approved by the Conciliation Committee on 22 June 2006 ⁽²⁾,

Whereas:

- (1) Community legislation in the field of the environment aims to contribute *inter alia* to preserving, protecting and improving the quality of the environment and protecting human health, thereby promoting sustainable development.
- (2) The Sixth Community Environment Action Programme ⁽³⁾ stresses the importance of providing adequate environmental information and effective opportunities for public participation in environmental decision-making, thereby increasing accountability and transparency of decision-making and contributing to public awareness and support for the decisions taken. It furthermore encourages, as did its predecessors ⁽⁴⁾, more effective implementation and application of Community legislation on environmental protection, including the enforcement of Community rules and the taking of action against breaches of Community environmental legislation.

(3) On 25 June 1998 the Community signed the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter the Aarhus Convention). The Community approved the Aarhus Convention on 17 February 2005 ⁽⁵⁾. Provisions of Community law should be consistent with that Convention.

(4) The Community has already adopted a body of legislation, which is evolving and contributes to the achievement of the objectives of the Aarhus Convention. Provision should be made to apply the requirements of the Convention to Community institutions and bodies.

(5) It is appropriate to deal with the three pillars of the Aarhus Convention, namely access to information, public participation in decision-making and access to justice in environmental matters, in one piece of legislation and to lay down common provisions regarding objectives and definitions. This contributes to rationalising legislation and increasing the transparency of the implementation measures taken with regard to Community institutions and bodies.

(6) As a general principle, the rights guaranteed by the three pillars of the Aarhus Convention are without discrimination as to citizenship, nationality or domicile.

(7) The Aarhus Convention defines public authorities in a broad way, the basic concept being that wherever public authority is exercised, there should be rights for individuals and their organisations. It is therefore necessary that the Community institutions and bodies covered by this Regulation be defined in the same broad and functional way. Under the Aarhus Convention, Community institutions and bodies can be excluded from the scope of application of the Convention when acting in a judicial or legislative capacity. However, for reasons of consistency with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽⁶⁾, the provisions on access to environmental information should apply to Community institutions and bodies acting in a legislative capacity.

⁽¹⁾ OJ C 117, 30.4.2004, p. 52.

⁽²⁾ Opinion of the European Parliament of 31 March 2004 (OJ C 103 E, 29.4.2004, p. 612), Council Common Position of 18 July 2005 (OJ C 264 E, 25.10.2005, p. 18), and Position of the European Parliament of 18 January 2006 (not yet published in the Official Journal). Legislative resolution of the European Parliament of 4 July 2006 (not yet published in the Official Journal) and Decision of the Council of 18 July 2006.

⁽³⁾ Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme (OJ L 242, 10.9.2002, p. 1).

⁽⁴⁾ Fourth Community Action Programme for the Environment (OJ C 328, 7.12.1987, p. 1), Fifth Community Action Programme for the Environment (OJ C 138, 17.5.1993, p. 1).

⁽⁵⁾ Council Decision 2005/370/EC (OJ L 124, 17.5.2005, p. 1).

⁽⁶⁾ OJ L 145, 31.5.2001, p. 43.

- (8) The definition of environmental information in this Regulation encompasses information in any form on the state of the environment. This definition, which has been aligned to the definition adopted for Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC ⁽¹⁾, has the same content as the one laid down in the Aarhus Convention. The definition of 'document' in Regulation (EC) No 1049/2001 encompasses environmental information as defined in this Regulation.
- (9) It is appropriate for this Regulation to provide for a definition of plans and programmes taking into account the provisions of the Aarhus Convention, in parallel with the approach followed in relation to the Member States' obligations under existing EC law. 'Plans and programmes relating to the environment' should be defined in relation to their contribution to the achievement, or to their likely significant effect on the achievement, of the objectives and priorities of Community environmental policy. For the ten-year period starting from 22 July 2002, the Sixth Community Environment Action Programme establishes the objectives of Community environmental policy and the actions planned to attain these objectives. At the end of this period, a subsequent environmental action programme should be adopted.
- (10) In view of the fact that environmental law is constantly evolving, the definition of environmental law should refer to the objectives of Community policy on the environment as set out in the Treaty.
- (11) Administrative acts of individual scope should be open to possible internal review where they have legally binding and external effects. Similarly, omissions should be covered where there is an obligation to adopt an administrative act under environmental law. Given that acts adopted by a Community institution or body acting in a judicial or legislative capacity can be excluded, the same should apply to other inquiry procedures where the Community institution or body acts as an administrative review body under provisions of the Treaty.
- (12) The Aarhus Convention calls for public access to environmental information either following a request or by active dissemination by the authorities covered by the Convention. Regulation (EC) No 1049/2001 applies to the European Parliament, the Council and the Commission, as well as to agencies and similar bodies set up by a Community legal act. It lays down rules for these institutions that comply to a great extent with the rules laid down in the Aarhus Convention. It is necessary to extend the application of Regulation (EC) No 1049/2001 to all other Community institutions and bodies.
- (13) Where the Aarhus Convention contains provisions that are not, in whole or in part, to be found also in Regulation (EC) No 1049/2001, it is necessary to address those, in particular with regard to the collection and dissemination of environmental information.
- (14) For the right of public access to environmental information to be effective, environmental information of good quality is essential. It is therefore appropriate to introduce rules that oblige Community institutions and bodies to ensure such quality.
- (15) Where Regulation (EC) No 1049/2001 provides for exceptions, these should apply subject to any more specific provisions in this Regulation concerning requests for environmental information. The grounds for refusal as regards access to environmental information should be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information requested relates to emissions in the environment. The term 'commercial interests' covers confidentiality agreements concluded by institutions or bodies acting in a banking capacity.
- (16) Pursuant to Decision No 2119/98/EC of the European Parliament and the Council of 24 September 1998 setting up a network for the epidemiological surveillance and control of communicable diseases in the Community ⁽²⁾, a network at Community level has already been set up to promote cooperation and coordination between the Member States, with the assistance of the Commission, with a view to improving the prevention and control in the Community of a number of communicable diseases. Decision No 1786/2002/EC of the European Parliament and of the Council ⁽³⁾ adopts a programme of Community action in the field of public health that complements national policies. Improving information and knowledge for the development of public health and enhancing the capability to respond rapidly and in a coordinated fashion to threats to health, both of which are elements of this programme, are objectives that are equally fully in line with the requirements of the Aarhus Convention. This Regulation should therefore apply without prejudice to Decision No 2119/98/EC and Decision No 1786/2002/EC.

⁽¹⁾ OJ L 41, 14.2.2003, p. 26.

⁽²⁾ OJ L 268, 3.10.1998, p. 1. Decision as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

⁽³⁾ OJ L 271, 9.10.2002, p. 1. Decision as amended by Decision No 786/2004/EC (OJ L 138, 30.4.2004, p. 7).

(17) The Aarhus Convention requires Parties to make provisions for the public to participate during the preparation of plans and programmes relating to the environment. Such provisions are to include reasonable timeframes for informing the public of the environmental decision-making in question. To be effective, public participation is to take place at an early stage, when all options are open. When laying down provisions on public participation, Community institutions and bodies, should identify the public which may participate. The Aarhus Convention also requires that, to the extent appropriate, Parties shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.

(18) Article 9(3) of the Aarhus Convention provides for access to judicial or other review procedures for challenging acts and omissions by private persons and public authorities which contravene provisions of law relating to the environment. Provisions on access to justice should be consistent with the Treaty. It is appropriate in this context that this Regulation address only acts and omissions by public authorities.

(19) To ensure adequate and effective remedies, including those available before the Court of Justice of the European Communities under the relevant provisions of the Treaty, it is appropriate that the Community institution or body which issued the act to be challenged or which, in the case of an alleged administrative omission, omitted to act, be given the opportunity to reconsider its former decision, or, in the case of an omission, to act.

(20) Non-governmental organisations active in the field of environmental protection which meet certain criteria, in particular in order to ensure that they are independent and accountable organisations that have demonstrated that their primary objective is to promote environmental protection, should be entitled to request internal review at Community level of acts adopted or of omissions under environmental law by a Community institution or body, with a view to their reconsideration by the institution or body in question.

(21) Where previous requests for internal review have been unsuccessful, the non-governmental organisation concerned should be able to institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty.

(22) This Regulation respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on the European Union and reflected in the Charter of Fundamental Rights of the European Union, in particular Article 37 thereof,

HAVE ADOPTED THIS REGULATION:

TITLE I
GENERAL PROVISIONS

Article 1

Objective

1. The objective of this Regulation is to contribute to the implementation of the obligations arising under the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, hereinafter referred to as 'the Aarhus Convention', by laying down rules to apply the provisions of the Convention to Community institutions and bodies, in particular by:

- (a) guaranteeing the right of public access to environmental information received or produced by Community institutions or bodies and held by them, and by setting out the basic terms and conditions of, and practical arrangements for, the exercise of that right;
- (b) ensuring that environmental information is progressively made available and disseminated to the public in order to achieve its widest possible systematic availability and dissemination. To that end, the use, in particular, of computer telecommunication and/or electronic technology, where available, shall be promoted;
- (c) providing for public participation concerning plans and programmes relating to the environment;
- (d) granting access to justice in environmental matters at Community level under the conditions laid down by this Regulation.

2. In applying the provisions of this Regulation, the Community institutions and bodies shall endeavour to assist and provide guidance to the public with regard to access to information, participation in decision-making and access to justice in environmental matters.

Article 2

Definitions

1. For the purpose of this Regulation:
- (a) 'applicant' means any natural or legal person requesting environmental information;
 - (b) 'the public' means one or more natural or legal persons, and associations, organisations or groups of such persons;

- (c) 'Community institution or body' means any public institution, body, office or agency established by, or on the basis of, the Treaty except when acting in a judicial or legislative capacity. However, the provisions under Title II shall apply to Community institutions or bodies acting in a legislative capacity;
- (d) 'environmental information' means any information in written, visual, aural, electronic or any other material form on:
- (i) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (ii) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in point (i);
 - (iii) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in points (i) and (ii) as well as measures or activities designed to protect those elements;
 - (iv) reports on the implementation of environmental legislation;
 - (v) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in point (iii);
 - (vi) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment referred to in point (i) or, through those elements, by any of the matters referred to in points (ii) and (iii);
- (e) 'plans and programmes relating to the environment' means plans and programmes,
- (i) which are subject to preparation and, as appropriate, adoption by a Community institution or body;
 - (ii) which are required under legislative, regulatory or administrative provisions; and
 - (iii) which contribute to, or are likely to have significant effects on, the achievement of the objectives of Community environmental policy, such as laid down in the Sixth Community Environment Action Programme, or in any subsequent general environmental action programme.

General environmental action programmes shall also be considered as plans and programmes relating to the environment.

This definition shall not include financial or budget plans and programmes, namely those laying down how particular projects or activities should be financed or those related to the proposed annual budgets, internal work programmes of a Community institution or body, or emergency plans and programmes designed for the sole purpose of civil protection;

- (f) 'environmental law' means Community legislation which, irrespective of its legal basis, contributes to the pursuit of the objectives of Community policy on the environment as set out in the Treaty: preserving, protecting and improving the quality of the environment, protecting human health, the prudent and rational utilisation of natural resources, and promoting measures at international level to deal with regional or worldwide environmental problems;
- (g) 'administrative act' means any measure of individual scope under environmental law, taken by a Community institution or body, and having legally binding and external effects;
- (h) 'administrative omission' means any failure of a Community institution or body to adopt an administrative act as defined in (g).

2. Administrative acts and administrative omissions shall not include measures taken or omissions by a Community institution or body in its capacity as an administrative review body, such as under:

- (a) Articles 81, 82, 86 and 87 of the Treaty (competition rules);
- (b) Articles 226 and 228 of the Treaty (infringement proceedings);
- (c) Article 195 of the Treaty (Ombudsman proceedings);
- (d) Article 280 of the Treaty (OLAF proceedings).

TITLE II

ACCESS TO ENVIRONMENTAL INFORMATION

Article 3

Application of Regulation (EC) No 1049/2001

Regulation (EC) No 1049/2001 shall apply to any request by an applicant for access to environmental information held by Community institutions and bodies without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

For the purposes of this Regulation, the word 'institution' in Regulation (EC) No 1049/2001 shall be read as 'Community institution or body'.

Article 4

Collection and dissemination of environmental information

1. Community institutions and bodies shall organise the environmental information which is relevant to their functions and which is held by them, with a view to its active and systematic dissemination to the public, in particular by means of computer telecommunication and/or electronic technology in accordance with Articles 11(1) and (2), and 12 of Regulation (EC) No 1049/2001. They shall make this environmental information progressively available in electronic databases that are easily accessible to the public through public telecommunication networks. To that end, they shall place the environmental information that they hold on databases and equip these with search aids and other forms of software designed to assist the public in locating the information they require.

The information made available by means of computer telecommunication and/or electronic technology need not include information collected before the entry into force of this Regulation unless it is already available in electronic form. Community institutions and bodies shall as far as possible indicate where information collected before entry into force of this Regulation which is not available in electronic form is located.

Community institutions and bodies shall make all reasonable efforts to maintain environmental information held by them in forms or formats that are readily reproducible and accessible by computer telecommunications or by other electronic means.

2. The environmental information to be made available and disseminated shall be updated as appropriate. In addition to the documents listed in Article 12(2) and (3) and in Article 13(1) and (2) of Regulation (EC) No 1049/2001, the databases or registers shall include the following:

- (a) texts of international treaties, conventions or agreements, and of Community legislation on the environment or relating to it, and of policies, plans and programmes relating to the environment;
- (b) progress reports on the implementation of the items referred to under (a) where prepared or held in electronic form by Community institutions or bodies;
- (c) steps taken in proceedings for infringements of Community law from the stage of the reasoned opinion pursuant to Article 226(1) of the Treaty;
- (d) reports on the state of the environment as referred to in paragraph 4;

- (e) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;
- (f) authorisations with a significant impact on the environment, and environmental agreements, or a reference to the place where such information can be requested or accessed;
- (g) environmental impact studies and risk assessments concerning environmental elements, or a reference to the place where such information can be requested or accessed.

3. In appropriate cases, Community institutions and bodies may satisfy the requirements of paragraphs 1 and 2 by creating links to Internet sites where the information can be found.

4. The Commission shall ensure that, at regular intervals not exceeding four years, a report on the state of the environment, including information on the quality of, and pressures on, the environment is published and disseminated.

Article 5

Quality of the environmental information

1. Community institutions and bodies shall, insofar as is within their power, ensure that any information that is compiled by them, or on their behalf, is up-to-date, accurate and comparable.

2. Community institutions and bodies shall, upon request, inform the applicant of the place where information on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information can be found, if it is available. Alternatively, they may refer them to the standardised procedure that was used.

Article 6

Application of exceptions concerning requests for access to environmental information

1. As regards Article 4(2), first and third indents, of Regulation (EC) No 1049/2001, with the exception of investigations, in particular those concerning possible infringements of Community law, an overriding public interest in disclosure shall be deemed to exist where the information requested relates to emissions into the environment. As regards the other exceptions set out in Article 4 of Regulation (EC) No 1049/2001, the grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information requested relates to emissions into the environment.

2. In addition to the exceptions set out in Article 4 of Regulation (EC) No 1049/2001, Community institutions and bodies may refuse access to environmental information where disclosure of the information would adversely affect the protection of the environment to which the information relates, such as the breeding sites of rare species.

Article 7

Requests for access to environmental information which is not held by a Community institution or body

Where a Community institution or body receives a request for access to environmental information and where this information is not held by that Community institution or body, it shall, as promptly as possible, but within 15 working days at the latest, inform the applicant of the Community institution or body or the public authority within the meaning of Directive 2003/4/EC to which it believes it is possible to apply for the information requested or transfer the request to the relevant Community institution or body or the public authority and inform the applicant accordingly.

Article 8

Cooperation

In the event of an imminent threat to human health, life or the environment, whether caused by human activities or due to natural causes, Community institutions and bodies shall, upon request of public authorities within the meaning of Directive 2003/4/EC, collaborate with and assist those public authorities in order to enable the latter to disseminate immediately and without delay to the public that might be affected all environmental information which could enable it to take measures to prevent or mitigate harm arising from the threat, to the extent that this information is held by or on behalf of Community institutions and bodies and/or those public authorities.

The first subparagraph shall apply without prejudice to any specific obligation laid down by Community legislation, in particular by Decision No 2119/98/EC and by Decision No 1786/2002/EC.

TITLE III

PUBLIC PARTICIPATION CONCERNING PLANS AND PROGRAMMES RELATING TO THE ENVIRONMENT

Article 9

1. Community institutions and bodies shall provide, through appropriate practical and/or other provisions, early and effective opportunities for the public to participate during the preparation, modification or review of plans or programmes relating to the environment when all options are still open. In particular, where the Commission prepares a proposal for such a plan or programme which is submitted to other Community institutions or bodies for decision, it shall provide for public participation at that preparatory stage.

2. Community institutions and bodies shall identify the public affected or likely to be affected by, or having an interest in, a

plan or programme of the type referred to in paragraph 1, taking into account the objectives of this Regulation.

3. Community institutions and bodies shall ensure that the public referred to in paragraph 2 is informed, whether by public notices or other appropriate means, such as electronic media where available, of:

- (a) the draft proposal, where available;
- (b) the environmental information or assessment relevant to the plan or programme under preparation, where available; and
- (c) practical arrangements for participation, including:
 - (i) the administrative entity from which the relevant information may be obtained,
 - (ii) the administrative entity to which comments, opinions or questions may be submitted, and
 - (iii) reasonable time-frames allowing sufficient time for the public to be informed and to prepare and participate effectively in the environmental decision-making process.

4. A time limit of at least eight weeks shall be set for receiving comments. Where meetings or hearings are organised, prior notice of at least four weeks shall be given. Time limits may be shortened in urgent cases or where the public has already had the opportunity to comment on the plan or programme in question.

5. In taking a decision on a plan or programme relating to the environment, Community institutions and bodies shall take due account of the outcome of the public participation. Community institutions and bodies shall inform the public of that plan or programme, including its text, and of the reasons and considerations upon which the decision is based, including information on public participation.

TITLE IV

INTERNAL REVIEW AND ACCESS TO JUSTICE

Article 10

Request for internal review of administrative acts

1. Any non-governmental organisation which meets the criteria set out in Article 11 is entitled to make a request for internal review to the Community institution or body that has adopted an administrative act under environmental law or, in case of an alleged administrative omission, should have adopted such an act.

Such a request must be made in writing and within a time limit not exceeding six weeks after the administrative act was adopted, notified or published, whichever is the latest, or, in the case of an alleged omission, six weeks after the date when the administrative act was required. The request shall state the grounds for the review.

2. The Community institution or body referred to in paragraph 1 shall consider any such request, unless it is clearly unsubstantiated. The Community institution or body shall state its reasons in a written reply as soon as possible, but no later than 12 weeks after receipt of the request.

3. Where the Community institution or body is unable, despite exercising due diligence, to act in accordance with paragraph 2, it shall inform the non-governmental organisation which made the request as soon as possible and at the latest within the period mentioned in that paragraph, of the reasons for its failure to act and when it intends to do so.

In any event, the Community institution or body shall act within 18 weeks from receipt of the request.

Article 11

Criteria for entitlement at Community level

1. A non-governmental organisation shall be entitled to make a request for internal review in accordance with Article 10, provided that:
 - (a) it is an independent non-profit-making legal person in accordance with a Member State's national law or practice;
 - (b) it has the primary stated objective of promoting environmental protection in the context of environmental law;
 - (c) it has existed for more than two years and is actively pursuing the objective referred to under (b);
 - (d) the subject matter in respect of which the request for internal review is made is covered by its objective and activities.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 6 September 2006.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
P. LEHTOMÄKI

2. The Commission shall adopt the provisions which are necessary to ensure transparent and consistent application of the criteria mentioned in paragraph 1.

Article 12

Proceedings before the Court of Justice

1. The non-governmental organisation which made the request for internal review pursuant to Article 10 may institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty.

2. Where the Community institution or body fails to act in accordance with Article 10(2) or (3) the non-governmental organisation may institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty.

TITLE V

FINAL PROVISIONS

Article 13

Application measures

Where necessary, Community institutions and bodies shall adapt their rules of procedure to the provisions of this Regulation. These adaptations shall take effect from 28 June 2007.

Article 14

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 Union*.

It shall apply from 28 June 2007.

Rules of Procedure of the European Council

Article 10

2.12.2009

EN

Official Journal of the European Union

L 315/55

Article 10

Making public votes, explanations of votes and minutes and access to documents

1. In cases where, in accordance with the Treaties, the European Council adopts a decision, the European Council may decide, in accordance with the voting arrangement applicable for the adoption of that decision, to make public the results of votes, as well as the statements in its minutes and the items in those minutes relating to the adoption of that decision.

Where the result of a vote is made public, the explanations of the vote provided when the vote was taken shall also be made public at the request of the member of the European Council concerned, with due regard for these Rules of Procedure, legal certainty and the interests of the European Council.

2. The provisions concerning public access to Council documents set out in Annex II to the Rules of Procedure of the Council shall apply *mutatis mutandis* to European Council documents.

Rules of Procedure of the Council - Articles 5 to 10 and Annex II

L 325/40

EN

Official Journal of the European Union

11.12.2009

Article 5

Meetings

1. The Council shall meet in public when it deliberates and votes on a draft legislative act ⁽¹⁾. In other cases, meetings of the Council shall not be public except in the cases referred to in Article 8.
2. The Commission shall be invited to take part in meetings of the Council. The same applies to the European Central Bank in cases where it exercises its right of initiative. The Council may, however, decide to deliberate without the presence of the Commission or of the European Central Bank.
3. The members of the Council and of the Commission may be accompanied by officials who assist them. The names and functions of those officials shall be notified in advance to the General Secretariat. The maximum number of persons per delegation in the Council meeting room at the same time, including members of the Council, may be laid down by the Council.
4. Admission to meetings of the Council shall be subject to the production of a pass delivered by the General Secretariat.

Article 6

Professional secrecy and production of documents in legal proceedings

1. Without prejudice to Articles 7, 8 and 9 and to provisions on public access to documents, the deliberations of the Council shall be covered by the obligation of professional secrecy, except in so far as the Council decides otherwise.
2. The Council or Coreper may authorise the production for use in legal proceedings of a copy of or an extract from Council documents which have not already been released to the public in accordance with the provisions on public access to documents.

Article 7

Legislative procedure and openness

1. The Council shall meet in public when it deliberates and votes on a draft legislative act. To that end, its agenda shall include a part entitled 'Legislative deliberations'.
2. Documents submitted to the Council which are listed under an item on the 'Legislative deliberations' part of its agenda shall be made public, and likewise those sections of the Council minutes which relate to that part of the agenda.
3. The opening to the public of Council meetings relating to the 'Legislative deliberations' part of its agenda shall be made through public transmission by audiovisual means, notably in an overflow room and through broadcasting in all official languages of the institutions of the European Union using video-streaming. A recorded version shall remain available for at least one month on the Council's Internet site. The outcome of voting shall be indicated by visual means.

The General Secretariat shall take steps to inform the public in advance of the dates and approximate time on which such audiovisual transmissions will take place and shall take all practical measures to ensure the proper implementation of this Article.

4. The results of votes and explanations of votes by members of the Council or their representatives on the Conciliation Committee provided for under the ordinary legislative procedure, as well as the statements in the Council minutes and the items in those minutes relating to the Conciliation Committee meeting shall be made public.
5. Where legislative proposals or initiatives are submitted to it the Council shall refrain from adopting acts which are not provided for by the Treaties, such as resolutions, conclusions or declarations other than those accompanying the adoption of the act and intended for entry in the Council minutes.

⁽¹⁾ This sentence reproduces the first sentence of Article 16(8) of the TEU.

*Article 8***Other cases of Council deliberations open to the public and public debates**

1. Where a non-legislative proposal is submitted to the Council relating to the adoption of rules which are legally binding in or for the Member States, by means of regulations, directives or decisions, on the basis of the relevant provisions of the Treaties, with the exception of internal measures, administrative or budgetary acts, acts concerning interinstitutional or international relations or non-binding acts (such as conclusions, recommendations or resolutions), the Council's first deliberation on important new proposals shall be open to the public. The Presidency shall identify which new proposals are important and the Council or Coreper may decide otherwise, whenever appropriate.

The Presidency may decide, on a case-by-case basis, that the subsequent Council deliberations on one of the proposals referred to in the first subparagraph shall be open to the public, unless the Council or Coreper decides otherwise.

2. On a decision taken by the Council or by Coreper, acting by a qualified majority, the Council shall hold public debates on important issues affecting the interests of the European Union and its citizens.

It shall be for the Presidency, any member of the Council, or the Commission to propose issues or specific subjects for such debates, taking into account the importance of the matter and its interest to citizens.

3. The General Affairs Council shall hold a public policy debate on the Council's 18-month programme. Policy debates in other Council configurations on their priorities shall also be held in public. The Commission's presentation of its five-year programme, of its annual work programme and of its annual policy strategy, as well as the ensuing debate in the Council, shall be public.

4. As from the sending of the provisional agenda pursuant to Article 3:

- (a) those items on the agenda of the Council which are open to the public in accordance with paragraph 1 shall be marked with the words 'public deliberation';
- (b) those items on the agenda of the Council which are open to the public in accordance with paragraphs 2 and 3 shall be marked with the words 'public debate'.

The opening to the public of Council deliberations and public debates in accordance with this Article shall be made through public transmission as described in Article 7(3).

*Article 9***Making votes, explanations of votes and minutes public in other cases**

1. Where the Council adopts non-legislative acts referred to in Article 8(1), the results of votes and explanations of votes by Council members, as well as the statements in the Council minutes and the items in those minutes relating to the adoption of such acts, shall be made public.

2. Moreover, the results of votes shall be made public:

- (a) when the Council acts pursuant to Title V of the TEU, by a unanimous Council or Coreper decision taken at the request of one of their members;
- (b) in other cases, by Council or Coreper decision taken at the request of one of their members.

When the result of a vote in the Council is made public in accordance with points (a) and (b) of the first subparagraph, the explanations of votes made when the vote was taken shall also be made public at the request of the Council members concerned, with due regard for these Rules of Procedure, legal certainty and the interests of the Council.

Statements entered in the Council minutes and items in those minutes relating to the adoption of the acts referred to in points (a) and (b) of the first subparagraph shall be made public by Council or Coreper decision taken at the request of one of their members.

3. Except in cases where Council deliberations are open to the public in accordance with Articles 7 and 8, votes shall not be made public in the case of discussions leading to indicative votes or the adoption of preparatory acts.

Article 10

Public access to Council documents

The specific provisions regarding public access to Council documents are set out in Annex II.

ANNEX II

Specific provisions regarding public access to Council documents*Article 1***Scope**

Any natural or legal person shall have access to Council documents subject to the principles, conditions and limits laid down in Regulation (EC) No 1049/2001 and the specific provisions laid down in this Annex.

*Article 2***Consultation as regards third-party documents**

1. For the purpose of applying Article 4(5) and Article 9(3) of Regulation (EC) No 1049/2001 and unless it is clear, upon examination of the document in the light of Article 4(1), (2) and (3) of Regulation (EC) No 1049/2001, that it shall not be disclosed, the third party concerned shall be consulted if:

(a) the document is a sensitive document as defined in Article 9(1) of Regulation (EC) No 1049/2001;

(b) the document originates from a Member State and:

— was submitted to the Council before 3 December 2001; or

— the Member State concerned requested that it not be disclosed without its prior agreement.

2. In all other cases, where the Council receives an application for a third-party document in its possession, the General Secretariat, for the purpose of applying Article 4(4) of Regulation (EC) No 1049/2001, shall consult the third party concerned unless it is clear, upon examination of the document in the light of Article 4(1), (2) and (3) of Regulation (EC) No 1049/2001, that it shall or shall not be disclosed.

3. The third party shall be consulted in writing (including by e-mail) and be given a reasonable time limit for its reply, taking into account the time limit laid down in Article 7 of Regulation (EC) No 1049/2001. In the cases referred to in paragraph 1, the third party shall be asked to give its opinion in writing.

4. Where the document does not fall within paragraph 1(a) or (b) and the General Secretariat, in the light of the third party's negative opinion, is not satisfied that Article 4(1) or (2) of Regulation (EC) No 1049/2001 is applicable, the Council shall be seized of the matter.

If the Council envisages the release of the document, the third party shall be informed immediately in writing of the Council's intention to release the document after a time period of at least 10 working days. At the same time, the third party's attention shall be drawn to Article 279 of the TFEU.

*Article 3***Requests for consultation received from other institutions or from Member States**

Requests for consultations with the Council made by another institution or a Member State concerning an application for a Council document shall be sent via e-mail to access@consilium.europa.eu or by fax to +32(0)2 281 63 61.

The General Secretariat shall give its opinion on behalf of the Council promptly, taking into account any time limit required for a decision to be made by the institution or the Member State concerned, and at the latest within five working days.

*Article 4***Documents originating from Member States**

Any request by a Member State under Article 4(5) of Regulation (EC) No 1049/2001 shall be made in writing to the General Secretariat.

*Article 5***Referral of requests by Member States**

When a Member State refers a request to the Council, it shall be handled in accordance with Articles 7 and 8 of Regulation (EC) No 1049/2001 and the relevant provisions of this Annex. In the event of a total or partial refusal of access, the applicant shall be informed that any confirmatory application must be addressed directly to the Council.

*Article 6***Address for applications**

Applications for access to a document shall be addressed in writing to the Secretary-General of the Council, rue de la Loi/Wetstraat 175, B-1048 Brussels, by e-mail to access@consilium.europa.eu or by fax to +32(0)2 281 63 61.

*Article 7***Processing of initial applications**

Subject to Article 9(2) and (3) of Regulation (EC) No 1049/2001, any application for access to a Council document shall be handled by the General Secretariat.

*Article 8***Processing of confirmatory applications**

Subject to Article 9(2) and (3) of Regulation (EC) No 1049/2001, any confirmatory application shall be decided upon by the Council.

*Article 9***Charges**

The charges for producing and sending copies of Council documents shall be set by the Secretary-General.

*Article 10***Public register of Council documents**

1. The General Secretariat shall be responsible for providing public access to the register of Council documents.
2. In addition to the references to documents, it shall be indicated in the register which documents drawn up after 1 July 2000 have already been released to the public. Subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽¹⁾ and Article 16 of Regulation (EC) No 1049/2001, their content shall be made available on the Internet.

*Article 11***Documents directly accessible to the public**

1. This Article shall apply to all Council documents, provided that they are not classified and without prejudice to the possibility of making a written application in accordance with Article 6 of Regulation (EC) No 1049/2001.
2. For the purpose of this Article:
 - 'circulation' shall mean distribution of the final version of a document to the members of the Council, their representatives or delegates,
 - 'legislative document' shall mean any document drawn up or received in the course of procedures for the adoption of a legislative act.
3. The General Secretariat shall make the following documents available to the public as soon as they have been circulated:
 - (a) documents of which neither the Council nor a Member State is the author, which have been made public by their author or with his or her agreement;

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

- (b) provisional agenda for meetings of the Council in its various configurations;
- (c) any text adopted by the Council and intended to be published in the Official Journal.

4. Provided that they are clearly not covered by any of the exceptions laid down in Article 4 of Regulation (EC) No 1049/2001, the General Secretariat may also make the following documents available to the public as soon as they have been circulated:

- (a) provisional agenda of committees and working parties;
- (b) other documents, such as information notes, reports, progress reports and reports on the state of discussions in the Council or one of its preparatory bodies which do not reflect individual positions of delegations, excluding Legal Service opinions and contributions.

5. The General Secretariat shall make legislative documents and the following documents available to the public, in addition to the documents referred to in paragraphs 3 and 4, as soon as they have been circulated:

- (a) cover notes and copies of letters concerning legislative acts and acts referred to in Article 8(1) of the Rules of Procedure addressed to the Council by other institutions or bodies of the European Union or, subject to Article 4(5) of Regulation (EC) No 1049/2001, by a Member State;
- (b) documents submitted to the Council which are listed under an item on its agenda included in the 'legislative deliberations' part or marked with the words 'public deliberation' or 'public debate' in accordance with Article 8 of the Rules of Procedure;
- (c) notes submitted to Coreper and/or to the Council for approval ('I/A' and 'A' item notes) concerning draft legislative acts and acts referred to in Article 8(1) of the Rules of Procedure, as well as the draft legislative acts and acts referred to in Article 8(1) of the said Rules to which they refer;
- (d) acts adopted by the Council during an ordinary or a special legislative procedure and joint texts approved by the Conciliation Committee under the ordinary legislative procedure.

6. After adoption of one of the acts referred to in paragraph 5(d) or final adoption of the act concerned, the General Secretariat shall make available to the public any documents relating to this act which were drawn up before one of such acts and which are not covered by any of the exceptions laid down in Article 4(1), (2) and (3), second subparagraph, of Regulation (EC) No 1049/2001, such as information notes, reports, progress reports and reports on the state of discussions in the Council or in one of its preparatory bodies (outcomes of proceedings), excluding Legal Service opinions and contributions.

At the request of a Member State, documents which are covered by the first subparagraph and reflect the individual position of that Member State's delegation in the Council shall not be made available to the public.

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EXISTS ONLY IN FRENCH

CONSEIL DE
L'UNION EUROPEENNE

Bruxelles, le 23 juillet 2002

6898/02

EXTRAIT

CRS/CRP 10

COMPTE RENDU SOMMAIRE

Objet: 1954ème réunion du COMITE DES REPRESENTANTS PERMANENTS tenue à Bruxelles, les 6 et 8 mars 2002

22. Accès du public aux documents

- Questions de principe soulevées par la mise en œuvre du règlement 1049/2001
doc. 6203/02 INF 49 API 38 JUR 72
5108/02 JUR 7 INST 1 INF 8 API 6

Le Comité procède à une discussion des deux questions de principe mentionnées dans le doc. 6203/02 et arrive aux conclusions suivantes:

- pour ce qui est de la première question (définition et traitement de documents originaires des Etats membres), la majorité au Comité soutient l'avis du Jurisconsulte du Conseil;
 - pour ce qui est de la deuxième question (traitement des documents relatifs aux actes législatifs qui continuent de faire l'objet de discussions et qui contiennent les positions des délégations), le Comité se prononce à l'unanimité pour la troisième option, c'est-à-dire rendre le contenu du document accessible au public, y compris le texte des notes de bas de pages et les autres références aux positions des délégations, tout en supprimant le nom de la délégation concernée et en excluant les parties relevant des exceptions prévues à l'article 4 du règlement (CE) n° 1049/2001.
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Sample replies to initial applications

(extracts from letters sent to applicants)

1. Access to document denied (Article 4(1)(a) and Article 4(3))

Document 8763/10 contains an outcome of proceedings of the Trade Policy Committee meeting (Deputies) held on 23 April 2010.

This document contains information on negotiations which have not yet been completed and on other trade related issues that are currently at stake. Disclosure of this information could impede the proper conduct of the negotiations and prejudice relations between the European Union and the third parties concerned. It could also weaken the future position of the EU in the framework of such negotiations and in its trade relations in general.

Accordingly, pursuant to Article 4(1)(a) of the Regulation (protection of the public interest with regard to international relations), and in the absence of any evidence of an overriding public interest in disclosure also pursuant to Article 4(3) of the Regulation (protection of the decision-making process of the Council), the General Secretariat is unable to grant you full access to this document.

2. Access to document denied (Article 4(1)(a) and Article 4(3))

Documents 17594/09 and 17594/1/09 REV 1 are «I/A» Item Notes from the «Mashraq/Maghreb» Working Party to the Coreper/Council concerning Union for the Mediterranean - Draft EU Guidelines and Proposal for a Work Programme for 2010.

These documents contain draft texts at a very preliminary stage and their release would not only affect relations with the third parties concerned but also seriously complicate future discussions both internally and with partner countries. Accordingly, pursuant to third indent Article 4(1)(a) of the Regulation (protection of the public interest with regard to international relations), and in the absence of any evidence of an overriding public interest in release also pursuant to the first subparagraph of Article 4(3) of the Regulation (protection of the decision making process of the Council), the General Secretariat is unable to accede to your request.

The General Secretariat has also looked into the possibility of disclosing parts of the documents pursuant to Article 4(6) of the Regulation. However, as the information contained in the documents forms an inseparable whole, partial access cannot be granted.

3. Partial refusal: partial access to document (Article 4(3))

Document 9076/1/10 REV 1 is a note from the General Secretariat of the Council to the Working Party on Pharmaceuticals and Medical Devices - Proposal for a Directive of the European Parliament and of the Council amending Directive 2001/83/EC as regards the prevention of the entry into the legal supply chain of medicinal products which are falsified in relation to their identity, history or source. No decision has yet been taken on the matter.

You may have access to the content of the document, including delegations' positions, but excluding those parts which enable the delegations concerned to be identified.

The General Secretariat considers this to be a good compromise between protection of the decision-making process of the Council, on the one hand, and public interest in disclosure, on the other. This allows you to be informed of the arguments raised during discussion concerning an issue on which the Institution has not yet taken a decision.

Nevertheless, the General Secretariat considers that protection of the institution's decision-making process outweighs possible public interest in identifying the delegations whose positions are set out in the document. In the framework of preliminary discussions and negotiations within the Council's preparatory bodies, it is essential that delegations are able to express their views freely so that the Council can find compromise solutions and achieve progress on delicate questions.

Disclosure at this stage of those parts of the document which allow identification of the delegations that have adopted positions on the subject still under discussion, would jeopardise this process, since it could seriously narrow delegations' room for manoeuvre to review their positions in the light of arguments put forward during discussion. The General Secretariat is of the opinion that disclosure of these parts of the document could seriously undermine the Council's decision-making process. Accordingly, pursuant to Article 4(3), first subparagraph of the Regulation (protection of the Council's decision-making process), the General Secretariat is at present unable to grant you access to these parts of the document.

Nevertheless, pursuant to Article 11(6) of Annex II to the Council's Rules of Procedure, this document and any other legislative document relating to this Directive shall be made available to the public in full after the final adoption of the act, unless their content is covered by Article 4(1), (2) or (3), second subparagraph, of Regulation (EC) No 1049/2001.

4. Refusal concerning specific parts: partial access to document (Article 4(1)(a), first indent, and Article 4(1)(b))

Document 10664/09 contains an outcome of proceedings of the meeting between the Troika of the Article 36 Committee and Interpol in Brussels on 18 May 2009.

Certain parts of the document contain detailed information on various sensitive items like, inter alia, stolen and lost travel documents, cyber crime cooperation between Europol and Interpol and the support of Africa in the fight against crime and terrorism. This information, if released to the public, could be exploited by individuals involved in various forms of organized crime.

Furthermore, the Annex to the document contains a list of participants to the meeting. Disclosure of this information would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

Accordingly, pursuant to Article 4(1)(a), first indent (protection of the public interest with regard to public security) and Article 4(1)(b) (protection of privacy and the integrity of the individual) of the Regulation, the General Secretariat is at present unable to accede to your request for full access.

However, pursuant to Article 4(6) of the Regulation, you may have access to those parts of the document which are not covered by these exceptions.

5. Refusal concerning specific parts: partial access to document (Article 4(1)(a), first and third indents)

Document 10279/03 (RESTREINT UE) contains a Presidency's Draft Report to the General Affairs and External Relations Council on the Status of the European Union's activities in the fight against terrorism. Disclosure of this information would compromise the measures taken against terrorists and their organisations. It would undermine the protection of the public interest as regards public security and prejudice relations between the European Union and third countries.

Accordingly, pursuant to Article 4(1)(a), first and third indent, of the Regulation (protection of the public interest with regard to public security and with regard to international relations), the General Secretariat is not in a position to grant full access to this document.

However, pursuant to Article 4(6) of the Regulation, you may have access to those parts of the document which are not covered by these exceptions. You will find them in document xxxx/xx EXT 1. (...)

Sample reply to a confirmatory application

(extracts from letters sent to applicants)

Reply to an initial application (refusal)

Document 5759/10 is a note from the European Union Military Committee - Revised EUMC Collegiate View on the EDA document: «Priorities - Proposed Mechanism to identify further Cooperative Actions».

The document contains opinions for internal use release of which would seriously affect the future development of the CSDP on issues related to the EDA.

Disclosure of this information would undermine the protection of public interest as regards defence and military matters. Accordingly, pursuant to the second indent of Article 4(1)(a) of the Regulation (protection of the public interest with regard to defence and military matters), and in the absence of any evidence of an overriding public interest in release also pursuant to the first subparagraph of Article 4(3) of the Regulation (protection of the decision making process of the Council), the General Secretariat is unable to accede to your request.

As the exceptions to the principle of transparency apply to the content of the entire document, the General Secretariat is unable to grant you partial access as provided for in Article 4(6) of the Regulation.

Reply to the confirmatory application (partial access)

Document 5759/10 is a note from the European Union Military Committee and contains a revised EUMC Collegiate View on the document «Priorities - Proposed Mechanism to identify further Cooperative Actions» drafted by the European Defence Agency. It also contains a contribution from the EUMC related to the preparation of Phase 1 of mechanism proposed by the EDA.

The document expresses an opinion by the EUMC for internal use on a document related to the update of the Capability Development Plan (CDP). In the Council's view, full release of this internal military opinion to the public would seriously compromise the on-going discussions on the update and review of the CDP, which is the major driver for EU Military Concept development, and would thereby also be detrimental to the efforts undertaken by the EDA and the Member States to keep on providing timely guidance for Member States' national defence planning and proposing innovative solutions for addressing ESDP capability requirements.

Accordingly, pursuant to the second indent of Article 4(1)(a) of the Regulation (protection of the public interest with regard to defence and military matters) and, in the absence of any evidence of an overriding public interest in release, also pursuant to the first subparagraph of Article 4(3) of the Regulation (protection of the decision-making process of the Council), the Council is unable to grant full public access to this document.

The Council has also examined, pursuant to Article 4(6) of the Regulation, the possibility of granting partial access to the document in question. The Council has come to the conclusion that partial access may be granted to the following parts of the document which are not covered by any of the exceptions under Regulation 1049/2001:

- page 1
- page 2: part entitled «Background»
- page 2: first paragraph of the part entitled «Comments»

I

(Acts whose publication is obligatory)

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community and in particular Article 203 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas, in carrying out their task, the institutions of the European Economic Community and the European Atomic Energy Community have accumulated a vast collection of archives whereas these archives constitute the property of these Communities, each of which has legal personality

Whereas it is standard practice, both in Member States and in international organizations, to make archives available to the public after a number of years has passed whereas common rules concerning the opening to the public of the historical archives of the European Communities should be laid down

Whereas some of the documents and records emanating from institutions of the European Economic Community and the European Atomic Energy Community are held physically in the archives of the Member States whereas the Member States apply different rules to determine when and on what conditions their archives may be made available to the public whereas classified documents and records emanating from Community institutions should be prevented from being released to the public through national archives on terms less strict than those provided for in this Regulation

Whereas the processing and critical analysis of Community archives is not only of value to historical research in general but can at the same time facilitate the activities of bodies involved in Community affairs and thereby contribute to the better attainment of all the Communities' objectives

Whereas the Treaties have not provided for any specific powers of action regarding the establishment of common rules for this subject

Whereas certain essential principles alone need to be determined, adoption of the requisite rules for the implementation, at internal level of such principles being left to each Community institution,

HAS ADOPTED THIS REGULATION

Article

The institutions of the European Economic Community and of the European Atomic Energy Community (hereinafter referred to as 'the institutions') shall establish historical archives and open them to the public on the terms provided for by this Regulation after the expiry of a period of 30 years starting from the date of the creation of the document or record. For the purposes of this Regulation the Economic and Social Committee and the Court of Auditors shall be treated in the same way as the institutions referred to in Article 4 of the Treaty establishing the European Economic Community and Article 3 of the Treaty establishing the European Atomic Energy Community

2. For the purposes of this Regulation

- (a) 'Community archives' means all those documents and records of whatever type and in whatever medium which have originated in or been received by one of the institutions or by their representative or servants in the performance of their duties, which relate to the activities of the European Economic Community and/or the European Atomic Energy Community (hereinafter referred to as 'the European Communities')

⁽¹⁾ OJ No C 32, 2. 6. 78, p. 6.

⁽²⁾ OJ No C 327, 4. 2. 78, p. 45.

(b) 'historical archives' consist of that part of the Community archives which has been selected, on the terms laid down in Article 7 of this Regulation, for permanent preservation.

3. All documents and records which were freely available before the expiry of the period provided for in paragraph 1 shall remain accessible to the public without restriction.

4. After the expiry of the 30-year period provided for in paragraph 1 access to the historical archives shall be given to any person who applies for it and agrees to abide by internal rules established for the purpose by each institution.

5. The historical archives shall be accessible in copy form. However the institutions may release the originals of the documents or records if the user shows a special and duly substantiated interest.

Article 2

This Regulation shall not apply to files of the European Communities staff or to documents and records containing information on the private or professional life of individual persons.

Article 3

The public shall not have access to

- a) documents and records that have been classified in accordance with Article 10 of Council Regulation No 3 of 3 July 1958 implementing Article 24 of the Treaty establishing the European Atomic Energy Community (⁽¹⁾), and have not been declassified;
- (b) contracts submitted to or concluded by the Euratom Supply Agency pursuant to Chapter VI of the Treaty establishing the European Atomic Energy Community;
- (c) documents and records of cases submitted for judgment to the Court of Justice of the European Communities.

2. The public shall not have access to documents and records which, according to the rules and practice of each institution, are graded confidential or higher unless they have been declassified in accordance with Article 5.

Article 4

Documents and records which when brought to the notice of an institution, are covered by the obligation of professional or business secrecy shall not be

released to the public after the 30-year period unless the institution which has notice of the document or record has previously informed the person or undertaking concerned of his intention to release them to the public and that person or undertaking does not object within a period to be laid down in the rules of application referred to in Article 9.

2. Paragraph 1 shall apply also to documents and records drawn up by an institution and comprising information covered by professional or business secrecy.

Article 5

For the sake of compliance with the 30-year rule provided for in Article 1(1), each institution shall in good time, and not later than the 25th year following the date of the creation of a document or record, examine all documents and records graded confidential or higher in order to decide whether or not to declassify them. Documents and records not declassified at the first such examination shall be re-examined periodically and at least every five years.

2. As regards documents and records received from a Member State or from another institution, the institutions shall abide by the classification established by the originator. However in order to ensure the broadest possible access to Community archives, the institutions and the Member States may agree on procedure for the declassification, according to criteria adopted by common agreement, of documents and records.

Article 6

Member States shall refrain from releasing to the public, on terms less strict than those laid down in Articles 1 to 5 documents and records, emanating from institutions and physically held in their public archives, which have been classified and have not been declassified.

2. Paragraph 1 shall also apply to such documents and records of the Member States which reproduce in full or in part the content of the documents referred to in that paragraph.

Article 7

Each institution shall transfer to the historical archives all documents and records contained in their current archives no later than 5 years after their date of creation. According to the criteria laid down by each institution pursuant to Article 9 there shall be an initial sorting process with the purpose of separating documents and records that are to be preserved from those that have no administrative or historical value.

(⁽¹⁾) OJ No 76 of 1958 p. 406/58

Article 8

Each institution may hold its historical archives in whatever place it considers most appropriate.

2. Each institution shall, on request, supply the Member States and the other institution to the extent that the Member State concerned is not the one in which the institution is situated or the institution

concerned are not situated in the same Member State, with a complete set of microform copies of its historical archives, in so far as public access to them is available under this Regulation

Article 9

Each institution may adopt, at internal level, detailed rules for the application of this Regulation

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, February 1983.

For the Council

The President

O SCHLECHT

I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC, EURATOM) No 1700/2003
of 22 September 2003**

amending Regulation (EEC, Euratom) No 354/83 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) Article 255 of the Treaty establishing the European Community gives any citizen of the Union and any natural or legal person residing or having its registered office in a Member State a right of access to European Parliament, Council and Commission documents.
- (2) The general principles and the limits governing the public's right of access to documents of the European Parliament, the Council and the Commission were laid down in Regulation (EC) No 1049/2001 of the European Parliament and of the Council ⁽¹⁾.
- (3) The exceptions to public right of access provided for in Regulation (EC) No 1049/2001 are applicable for a maximum period of 30 years, irrespective of the place where the documents are stored. The exceptions relating to protection of privacy or commercial interests and the specific provisions on sensitive documents may, however, apply beyond that period if necessary.
- (4) Council Regulation (EEC, Euratom) No 354/83 ⁽²⁾ provides that the public will not be given access to certain categories of documents 30 years after the documents were created. Pursuant to Article 18(2) of Regula-

tion (EC) No 1049/2001, it is necessary to bring these exceptions into line with the exceptions to right of access provided for in that Regulation.

- (5) For the purposes of Regulation (EEC, Euratom) No 354/83, the European Economic and Social Committee, the Committee of the Regions and similar agencies and bodies set up by the Community legislature should henceforth be treated in the same way as the institutions referred to in Article 7(1) of the Treaty establishing the European Community.
- (6) Regulation (EEC, Euratom) No 354/83 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC, Euratom) No 354/83 is hereby amended as follows:

1. Article 1(1), (2) and (3) shall be replaced by the following:

'Article 1

1. This Regulation seeks to ensure that documents of historical or administrative value are preserved and made available to the public wherever possible.

To that end, each institution of the European Community and of the European Atomic Energy Community, as well as the European Economic and Social Committee, the Committee of Regions, agencies and similar bodies set up by the legislator (hereinafter referred to as the institutions) shall establish its historical archives and open them to the public on the terms provided for by this Regulation after the expiry of a period of 30 years starting from the date of the creation of the document.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

⁽²⁾ OJ L 43, 15.2.1983, p. 1.

2. For the purposes of this Regulation:

(a) "archives of the institutions of the European Communities", means all those documents of whatever type and in whatever medium which have originated in or been received by one of the institutions or by their representatives or servants in the performance of their duties, which relate to the activities of the European Community and/or the European Atomic Energy Community (hereinafter referred to as the European Communities);

(b) "historical archives of the institutions of the European Communities", consist of that part of the archives of the institutions of the European Communities which has been selected, on the terms laid down in Article 7, for permanent preservation.

3. All documents available to the public before expiry of the period provided for in paragraph 1 shall remain available without restriction.;

2. Article 2 shall be replaced by the following:

'Article 2

1. In the case of documents covered by the exception relating to privacy and the integrity of the individual, as defined in Article 4(1)(b) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (*) and that relating to the commercial interests of a natural or legal person, including intellectual property, as defined in the first indent of Article 4(2) of Regulation No 1049/2001, the exceptions may continue to apply to all or part of a document after the 30-year period if the relevant conditions for their application are satisfied.

2. Documents covered by the exception relating to privacy and the integrity of the individual, as defined in Article 4(1)(b) of Regulation (EC) No 1049/2001, including files of staff of the European Communities, may be disclosed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (**), and in particular Articles 4 and 5 thereof.

3. Before deciding to make available to the public documents which, if disclosed, could undermine the commercial interests of a natural or legal person, including intellectual property, as defined in the first indent of Article 4(2) of Regulation (EC) No 1049/2001, the institution shall inform the person concerned, in accordance with the rules to be defined by each institution, of its intention to make the documents in question accessible to the public. The documents shall not be released if, taking account of the observa-

tions of the person concerned, the institution considers that their disclosure would undermine such commercial interests, unless there is an overriding public interest in disclosure.

4. Sensitive documents within the meaning of Article 9 of Regulation (EC) No 1049/2001 shall be accessible within the limits laid down in that Article.

(*) OJ L 145, 31.5.2001, p. 43.

(**) OJ L 8, 12.1.2002, p. 1.;

3. Article 3 shall be replaced by the following:

'Article 3

The public shall not have access to documents that have been classified in accordance with Article 10 of Council Regulation No 3 of 31 July 1958 implementing Article 24 of the Treaty establishing the European Atomic Energy Community (*), and have not been declassified.

(*) OJ No 17, 6.10.1958, p. 406/58.;

4. Article 4 shall be deleted;

5. Article 5 shall be replaced by the following:

'Article 5

For the sake of compliance with the 30-year rule provided for in Article 1(1), each institution shall in good time, and not later than the 25th year following the date of the creation of a document, examine all documents classified in accordance with the rules of the institution concerned in order to decide whether or not to declassify them. Documents not declassified at the first such examination shall be re-examined periodically and at least every five years.;

6. Article 6 shall be replaced by the following:

'Article 6

Where, after the expiry of the 30-year period provided for in Article 1(1), a Member State intends to release to the public documents originating from the institutions and covered by Article 2 or Article 3, it shall consult the institution concerned in order to take a decision that does not jeopardise the attainment of the objectives of this Regulation.;

7. Article 7 shall be replaced by the following:

'Article 7

Each institution shall transfer to its historical archives all documents contained in their current archives no later than 15 years after their date of creation. According to the criteria laid down by each institution pursuant to Article 9, there shall be an initial sorting process with the purpose of separating documents that are to be preserved from those that have no administrative or historical value.;

8. Article 9 shall be replaced by the following:

'Article 9

1. Each institution may adopt internal rules for the application of this Regulation. Wherever possible, the institutions shall make their archives available to the public by electronic means. They shall also conserve documents which are available in forms meeting special needs (Braille, large text or recordings).

2. Each institution shall publish information annually on its historical archiving activities.'

Article 2

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 22 September 2003.

For the Council

The President

F. FRATTINI

ANNEX

COUNCIL STATEMENT

The Council recalls that this Regulation does not affect the deposit contract between the European Communities and the European University Institute of 17 December 1984.

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

CONFERENCE OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES

DECISION OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES

of 29 October 2008

on the treatment of documents of EU civilian crisis management missions and military operations

(2008/836)

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN UNION,

Whereas:

(1) Insofar as documents of European Union civilian crisis management missions and military operations are not held by an institution, they do not fall within the scope of Community law regarding historical archives and public access to documents.

(2) Since such documents relate to the areas of activity of the European Union, it is appropriate that such documents be archived by the General Secretariat of the Council (GSC). These documents should henceforth be considered as documents held by the Council and should come within the scope of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents⁽¹⁾ and 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⁽²⁾,

HAVE DECIDED AS FOLLOWS:

Article 1

1. For the purposes of applying Regulation (EC) No 1049/2001 and Regulation (EEC, Euratom) No 354/83,

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

⁽²⁾ OJ L 43, 15.2.1983, p. 1.

documents of terminated, on-going and future civilian crisis management missions and military operations conducted under the auspices of the Council shall, upon termination of the missions and operations, be archived by the GSC and henceforth be considered as documents held by the Council.

2. The documents referred to in paragraph 1 shall not include documentation relating to staff issues, contracts with third parties and documentation pertaining thereto, or ephemeral documents.

3. The GSC shall ensure that documents classified by Member States or other authorities are protected in accordance with the Council's Security Regulations adopted by Council Decision 2001/264/EC⁽³⁾.

4. The Member States shall assist the GSC in obtaining copies of the documents referred to in paragraph 1.

5. The documents referred to in paragraph 1 shall be held in a specific location of the Archives. The personnel handling these documents shall receive training on European Security and Defence Policy documents and on the handling of classified information in this context.

⁽³⁾ OJ L 101, 11.4.2001, p. 1.

Article 2

This Decision shall enter into force on the day following its publication in the *Official Journal of the European Union*.

Done at Brussels, 29 October 2008.

The President
P. SELLAL

DECISION No 1044/99 OF THE SECRETARY-GENERAL OF THE COUNCIL CONCERNING THE OPENING TO THE PUBLIC OF THE HISTORICAL ARCHIVES OF THE COUNCIL

THE SECRETARY-GENERAL OF THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Regulation (EEC, EURATOM) No 354/83 of 1 February 1983 ⁽¹⁾ concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community, and in particular Article 9 thereof,

Having regard to Commission Decision No 359/83/ECSC of 8 February 1983 ⁽²⁾ concerning the opening to the public of the historical archives of the European Coal and Steel Community, and in particular Article 9 thereof,

Having regard to Council Decision 1999/385/EC, ECSC, Euratom adopting the Council's Rules of Procedure, and in particular the second subparagraph of Article 20(2) thereof ⁽³⁾,

Whereas rules should be adopted laying down the conditions under which consultation of the historical archives of the Council of the European Union is authorised,

HAS ADOPTED THIS DECISION:

Article 1

The historical archives of the European Economic Community, European Atomic Energy Community and European Coal and Steel Community may be consulted in accordance with the following rules:

"Rules of procedure for consulting the historical archives

Article 1

The historical archives consulting room shall be open to the public on working days between the hours of 09.00 and 16.30.

Article 2

The Deputy Director-General responsible, empowered by the Secretary-General, and the archivist, empowered by the Deputy Director-General responsible, may, if need be, order part or all of the consulting room to be closed, or place any other restriction on service during opening hours. The archivist may also open other rooms at times which he shall determine.

Article 3

Visitors shall have access exclusively to the rooms designated by the archivist.

Article 4

On each visit, visitors shall report to the official in charge and fill out a form, giving their name, address and the reasons for their research.

Article 5

No objects which the archivist considers may damage archive items or be disruptive shall be allowed into the archives.

Article 6

- (a) Requests for archive items shall be made to the official in charge of the consulting room or to any other official appointed for that purpose.
- (b) Visitors shall fill out the appropriate request form for archive items. No more than three catalogue items may be requested on the same form.

(c) The official in charge of the consulting room may limit the number of archive items which visitors may consult at any one time.

(d) There shall be no charge for consulting archive items.

Article 7

Visitors must obtain the agreement of the official in charge of the consulting room or of any other official appointed for that purpose in order to copy archive items on to paper or on to a portable computer.

Article 8

(a) Requests for copies shall be made in writing on the appropriate application forms to the official in charge of the consulting room or to any other official appointed for that purpose.

(b) The official in charge, or any other official appointed by him, may refuse to make copies of certain archive items if he considers this to be precluded by the condition or nature of the items.

Article 9

(a) Archive items and copies must be requested no later than half an hour before closing time.

(b) No archive items or copies will be issued between 12.00 and 14.00.

Article 10

(a) Visitors must exercise the utmost care when handling the archive items consulted.

(b) As soon as they have been consulted, archive items provided must be returned in the same condition and order in which they were received.

(c) Similarly, documents which may be consulted freely in the room must be put back, as soon as they have been consulted, in the same condition and order in which they were found.

Article 11

(a) Visitors may apply to the archivist to arrange for archive items stored elsewhere to be transferred to central archives for consultation in the consulting room.

(b) The archivist shall inform visitors as soon as possible whether their request can be met.

Article 12

Access may be refused to visitors who do not observe these rules and/or the instructions given in the interests of order and safety by or on behalf of the archivist.

Article 13

Decision No 682/96 of the Secretary-General of the Council is hereby repealed with effect from 1 July 1999.

Article 14

A copy of these rules shall be displayed at the entrance to the consulting room"

Article 2

This Decision shall take effect on 1 July 1999.

Done at Brussels, 25 June 1999.

The Secretary-General
Jürgen TRUMPF

⁽¹⁾ OJ L 43, 15.2.1983, p. 1.

⁽²⁾ OJ L 43, 15.2.1983, p. 14 + Corrigendum OJ L 55, 2.3.1983, p. 16.

⁽³⁾ OJ L 147, 12.6.1999, p. 13.

GENERAL SECRETARIAT OF THE COUNCIL	
STAFF NOTE	
Department responsible: DG F III – Central archives Tel.: 5671	187/08 21.11.2008

Subject: Document transmission to Central Archives and file disposal

This Staff Note cancels and replaces Staff Note 169/05 of 30.9.2005 to take into account the introduction of a new file disposal procedure.

1. The arrangements for transmitting documents to Archives are set out below.

The following are considered to be archive documents and must therefore be sent to Central Archives: ST, CM and DS documents, miscellaneous notes and any kind of correspondence, whatever their form or storage medium, produced or received by the Council, one of its representatives or a member of its staff in the course of the performance of their duties and relating to the activities of the European Union.

Mail

As regards incoming mail, DG A III – Registry forwards the originals and their annexes to Central Archives for filing as soon as they have been registered, and provides the relevant General Secretariat departments with photocopies.

As regards outgoing mail, a copy of each document is sent to Central Archives.

The originals of mail sent directly to a General Secretariat department or official must be forwarded by the main recipient to the Registry for registration.

ST, CM and DS documents

Ces documents sont transmis aux Archives centrales par la DG A III «Diffusion». Cette disposition n'est toutefois pas applicable aux documents classifiés (Très Secret, Secret, Confidentiel et Restreint).

2. This Staff Note also lays down the procedure departments should follow for file or document disposal.

In practice, a distinction can be drawn between two categories of file or document.

- a) Files relating to the department's specific duties

Such files usually contain copies of original documents which have already been forwarded to Central Archives, as well as other documents which may be useful for understanding the file or which are yet to be sent to Central Archives (DS documents, miscellaneous notes, correspondence, etc.).

For such files, any disposal of archives, whatever their date, form or medium, must be notified to DG F – Central Archives for approval by means of a form.

The disposal form (see Annex) must be sent to Central Archives after having been signed by the Head of the department which produced the documents.

Central Archives will examine the form and, if necessary, the documents in question. If Central Archives accept the request, the form will be returned to the department bearing a disposal stamp. The stamp will constitute an authorisation to destroy the documents. The documents concerned must be destroyed; they may not be disposed of in any other manner. No document may be destroyed by anyone before that stamp has been issued.

Should the disposal request be rejected in full or in part, the documents which are not to be destroyed must be transmitted to Central Archives.

b) Documents which do not relate to specific duties of the department

Such documents concern the department's organisation and internal procedures (staff management, orders for equipment and supplies, incoming/outgoing internal mail collection, etc.), or contain information which is broadly disseminated throughout the General Secretariat of the Council (Staff Notes, etc.).

These documents may be disposed of without prior request for the Central Archives stamp.

Any queries regarding the implementation of this Staff Note may be sent to Mr Jiménez-Fraile, Head of Unit (tel.: 6176), or Mr Weyssow, the official in charge of current and intermediate archives (tel.: 5671).

Marc LEPOIVRE

Annex

**CENTRAL ARCHIVES
DOCUMENT DISPOSAL FORM**

Requesting department

Directorate:.....

Department:.....

Name of the member of staff responsible for disposal:.....

Volume for which disposal is requested (shelf metres):.....

Number of pages in this form (including this page):

Date of dispatch of the request to Central Archives:.....

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DG	Central Archive correspondent	Tel.
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DG E, Services rattachés au SG/HR	Kerstin REINHARDT	6426
DG F, Cabinet, Service juridique	Francine SERRE	7107
DG G, DG I	Despina KANELLOU	6551

ARCHIVE DOCUMENT DISPOSAL FORM

Department:

To be completed by the department					
Description (document purpose and nature)	Start/end dates (oldest and most recent year of documents)	Shelf metres (sm) (1 shelf = 1 sm)	Duration of administrative usefulness (DAU) (period in years during which the documents had to be kept in the department for administrative usefulness reasons (relating to the department or of a legal nature))	Secure disposal (yes/no)	Comments

GENERAL SECRETARIAT OF THE COUNCIL	
STAFF NOTE	
Department responsible: DG F III – Transparency, Access to Documents Tel.: 6176/ 9417	200/08 4/12/2008

Subject: Reminder of the instructions on the production and distribution of documents
– Rules applicable to meeting documents

Here in the General Secretariat of the Council (GSC) we have found that, unfortunately, meeting documents (whether actual «DS» documents or other similar documents that are not entered in Workflow) are still being used too frequently. This is contrary to the rules for putting documents into the system.

Meeting documents may be produced only in exceptional circumstances. The rule is that all non sensitive documents submitted to the Council or one of its preparatory bodies must be produced as an «ST» («Standard») document. Where a document has, exceptionally, been circulated in another form – for example, as a meeting document («DS»), non-paper or similar document, in hard copy or in electronic form – it must either be converted into an «ST» document as soon as possible or be mentioned in the minutes, record or outcome of proceedings of the meeting. This means it will be referred to in the public register of Council documents, which will enable Regulation 1049/2001 on access to public documents to be properly applied.

Once again, therefore, I must draw everyone's attention to the need to observe scrupulously the conditions under which meeting documents may be used. As a reminder, I enclose the instructions on the production and distribution of documents which appeared in Staff Note 134/02 of 24 September 2002.

To ensure that Council staff responsible for the production and distribution of documents are familiar with the relevant procedures (or to help them refresh their knowledge on the subject), further training sessions geared to the particular circumstances of the various GSC departments will be held as from the first quarter of 2009. You will receive further information on this subject at a later date.

Any questions about applying the rules on transparency may be sent to Mr Ramón JIMÉNEZ FRAILE or Mr Jakob THOMSEN of DG F 3 by e-mail or telephone (6176 and 9413 respectively).

Pierre DE BOISSIEU

Annexe

SECRETARÍA GENERAL DEL CONSEJO GENERALSEKRETARIATET FOR RÅDET GENERALSEKRETARIAT DES RATES ΓΕΝΙΚΗ ΓΡΑΜΜΑΤΕΙΑ ΤΟΥ ΣΥΜΒΟΥΛΙΟΥ GENERAL SECRETARIAT OF THE COUNCIL SECRETARIAT GENERAL DU CONSEIL SEGRETARIATO GENERALE DEL CONSIGLIO SECRETARIAAT-GENERAAL VAN DE RAAD SECRETARIADO-GERAL DO CONSELHO NEUVOSTON PÄÄSIHTEERISTÖ RÅDETS GENERALSEKRETARIAT	COMUNICACIÓN AL PERSONAL MEDDELELSE TIL PERSONALET MITTEILUNG FÜR DAS PERSONAL ΑΝΑΚΟΙΝΩΣΗ ΠΡΟΣ ΤΟ ΠΡΟΣΩΠΙΚΟ STAFF NOTE COMMUNICATION AU PERSONNEL COMUNICAZIONE AL PERSONALE MEDEDELING VOOR HET PERSONEEL COMUNICAÇÃO AO PESSOAL HENKILÖSTÖTIEDOTE PERSONALMEDDELANDE
24/09/2002	N° 134/02

Re.: Access to Council documents¹**– Implementing rules**

The purpose of these instructions is to explain in simple terms how the rules applicable since 3 December 2001 regarding access to Council documents are to be applied, namely:

- Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents², (hereinafter «Regulation No 1049/2001») and
- The Council's Rules of Procedure³, and in particular Annex II thereto containing specific provisions regarding public access to Council documents (hereinafter «CRP»).

These instructions replace earlier guidelines, instructions and notes on the subject⁴. They are confined to issues relating to the production of documents and the implementation of rules governing direct access to certain documents. They will be supplemented by a «Council Guide» handbook covering all aspects of transparency, intended for delegations and General Secretariat officials.

Any questions concerning the implementation of transparency rules may be addressed to Mr Ramón JIMENEZ FRAILE or Mr Jacob VISSCHER of DG F by e-mail or by telephone on 6176 or 7183.

DG F will shortly be organising training sessions for all officials on the implementation of the transparency rules.

Pierre de Boissieu

¹ This staff note will be made available in all languages.

² OJ L 145, 31.5.2001, p. 43.

³ Council Decision 2002/682/EC, Euratom, of 22 July 2002 adopting the Council's Rules of Procedure, OJ L 230, 28.8.2002, p. 7. See Annex II, pp. 21 to 23.

⁴ These instructions replace the following notes:

- Note of 29 January 1999 from the Secretary-General to the Directors-General (guidelines and internal procedures for implementing Council Decision 93/731/EC of 20 December on public access to Council documents);
- Note of 27 April 2001 from the Deputy Secretary-General to the Directors-General and Heads of Cabinet (guidelines for implementing Council Decision 2001/320/EC of 9 April 2001 on making certain categories of Council documents available to the public);
- Note of 26 June 2001 from the Deputy Secretary-General to the Directors-General and Heads of Cabinet on the production of documents;
- Note of 17 October 2001 from the Deputy Secretary-General to the Directors-General and Heads of Cabinet on making certain categories of Council documents available to the public.

INSTRUCTIONS

I. PRODUCTION OF DOCUMENTS

1. All texts submitted to the Council, or to one of its preparatory bodies, which are to serve as a basis for deliberations⁵, influence the decision-making process⁶ or reflect the progress made on a given subject⁷, must be produced as an «ST» (Standard) document⁸.

Provisional agendas for Council meetings and Council preparatory bodies (committees and working parties) shall be published either in the form of «ST» documents or as telexes.

2. If exceptionally⁹ a document is distributed in another form, for example as a meeting document, non-paper or similar text, whether in hard copy or in electronic form, it must:
 - either be converted into an «ST» document as soon as possible;
 - or be referred to in the minutes, summary record or outcome of proceedings of the meeting in the form of a list of documents examined by the body in question; in the event of no summary record of a meeting being made, the list of documents other than «ST» documents submitted to that meeting will be annexed to the following summary record. The competent Directorates-General are responsible for keeping and filing these documents so that they can be produced should access be requested.
3. «SN» (no standard number) documents are not to be distributed to members of the Council or to preparatory bodies of the Council. These documents are reserved exclusively for internal use within the General Secretariat for administrative purposes, such as translation or for the preparation of «ST» documents.
4. The description of the subject-matter of the document should be as accurate as possible¹⁰, subject to point 5 below, and should not undermine the protection of the public interest (public security, defence and military matters, international relations, the financial, monetary or economic policy of the Community or a Member State), the privacy and integrity of the individual, commercial interests, court proceedings and legal advice, inspections, investigations and audits, or the decision-making process of the Council¹¹.
5. For sensitive documents (i.e. those classified as «TRES SECRET UE/EU TOP SECRET», «SECRET UE» or «CONFIDENTIEL UE»)¹², the following rules apply:
 - (a) where possible, the description of the document content must be worded in such a way that the reference to its subject-matter in the register does not undermine the protection of the above interests (point 4);

5 For instance notes from the Presidency or a delegation, containing drafts or proposals for a compromise on a Council act and cover notes from the General Secretariat containing drafts on which the Council or one of its preparatory bodies is called upon to express a position.

6 For instance, contributions from a delegation to discussions on a draft act referred to the Council.

7 In particular, outcomes of proceedings and summary records of Council preparatory bodies.

8 As a result, the references of this document (number, date, subject-matter) appear in the public register of Council documents.

9 In particular if, owing to deadlines, the document cannot be distributed as an «ST» document.

10 In particular, in the case of discussions during which many documents have been drawn up, the subject-matter heading for each document should contain not only the title of the draft act in question, but also a brief general description of the content, such as: «Proposal for a Regulation on ... – Outcome of first reading – Articles 1 to 10»; or «Proposal for a Directive on ... - Questions to the Council.»

11 See Article 11(2), last sentence, of Regulation No 1049/2001

12 See Article 9(1) of Regulation No 1049/2001. Note that RESTREINT UE documents are classified documents but not sensitive documents within the meaning of Regulation No 1049/2001.

- b) it is for the drafter of a sensitive document to stipulate the references that may appear in the public registre¹³. This means that whenever necessary for protection of the interests referred to under point 4, the description of the content and, in exceptional cases¹⁴, any reference to a sensitive document, including even its number and date, may be withheld from the register;
- (c) sensitive documents are mentioned in the register or are released only with the consent of the originator¹⁵.

II. DOCUMENTS DIRECTLY ACCESSIBLE TO THE PUBLIC ¹⁶

6. It should be noted that, provided it does not bear the code «LIMITE»¹⁷ and is not classified («RESTREINT UE», «CONFIDENTIEL UE», «SECRET UE» or «TRES SECRET UE/EU TOP SECRET»), the content of an «ST» document or of an agenda sent by telex is automatically accessible on the Internet upon circulation¹⁸.

7. Provided they are not classified, the following documents or telexes must automatically be made accessible, and may not bear the code «LIMITE»:

- a) provisional agendas for Council meetings (including lists of «A» items) and for its preparatory bodies, with the exception of agendas for the Political and Security Committee, the Military Committee, the Military Committee Working Group, the Politico–Military Working Party, the Security Committee and the Terrorism Working Parties (internal and international aspects)¹⁹;
- (b) documents originating from a third party which have been made public by the author or with his consent, such as cover notes and letters addressed to the Council by other institutions or bodies of the European Union or, subject to point 9(c) below, a Member State;
- (c) in the legislative field, «I/A» and «A» item notes submitted to Coreper and/or the Council, and draft legislative acts²⁰, draft common positions (Articles 251 and 252 TEC) and joint texts approved by the Conciliation Committee (Article 251 TEC) to which they refer;
- (d) any other text adopted by the Council (including by the written procedure) which is intended for publication in the Official Journal (legal/linguist documents).

8. Provided they are not classified, other «ST» documents and telexes must bear the code «LIMITE» only in the following cases:

13 See Article 9(2) of Regulation No 1049/2001.

14 In particular, if information on the very existence of the document would undermine the interests protected by its classification.

15 See Article 9(3) of Regulation No 1049/2001.

16 See Article 11 of Annex II to the CRP.

17 The code «LIMITE» is not a classification, but indicates that the document must not be circulated outside the institution or to anyone other than its members. The fact that a document bears the code «LIMITE» is without prejudice to its study during a subsequent application for access. If, after such application, the document is disclosed to the applicant, its content will also be made available on the Internet (See Article 10(2) of Annex II to the CRP).

18 «Circulation» means distribution of the final version of a document to the members of the Council, their representatives or delegates (See Article 11(2), first indent, of Annex II to the CRP).

19 The mere fact that an agenda refers to a classified document does not prevent the agenda from being disclosed automatically, save in the exceptional case where information on the very existence of the document would undermine the interests to be protected. In that case, the relevant part of the agenda should be classified at the appropriate level.

20 Legislative acts are regulations, directives, framework decisions or decisions, with the exception of internal measures, administrative or budgetary acts, acts concerning inter institutional or international relations and non binding acts, such as conclusions, recommendations or resolutions (Article 7 of the CRP).

- a) the document is an opinion or contribution from the Legal Service;
- (b) the document reflects the position of individual delegations;
- (c) disclosure of the document would undermine the protection of public interest (public security, defence and military matters, international relations, the financial, monetary or economic policy of the Community or a Member State), the privacy and integrity of the individual, commercial interests, court proceedings and legal advice, inspections, investigations and audits, or the decision-making process of the Council; the following criteria will be taken into account when appraising the potential prejudice to the decision-making process of the Council²¹:
- the state of the dossier: has agreement already been reached within the Council or one of its preparatory bodies on the act to be adopted? Or is the dossier still under discussion?
 - the degree of sensitivity of the dossier: is it a politically sensitive (legislative or other) draft on which it is difficult to reach agreement? Or is it a routine matter (for example, a question of procedure or of implementing existing rules) which does not raise any political problems?
 - the content of the document: does the document set out the facts on the progress of work within the Council on the matter, without going into detail as to the questions still pending? Or does the document give options for the outstanding substantive issues?
9. After a common position (Articles 251 and 252 TEC) has been adopted, a joint text has been approved by the Conciliation Committee, or a legislative act has been adopted definitively, all earlier «ST» documents which bore the code «LIMITE» and relating to the act in question must be made directly accessible to the public, unless:
- (a) their disclosure undermines the protection of public interest (public security, defence and military matters, international relations, the financial, monetary or economic policy of the Community or a Member State), the privacy and integrity of the individual, commercial interests, court proceedings and legal advice, inspections, investigations and audits; or
- (b) the document is an opinion or a contribution from the Legal Service; or
- (c) the document originates from a Member State delegation and reflects its position during the legislative procedure, and that delegation has requested that the document is not made directly accessible to the public²².
10. In order to ensure that the rules under point 9 are implemented properly, the following practical procedures will apply:
- (a) after the adoption of a common position (Articles 251 and 252 TEC) or the legislative act in question, DG F draws up a list of «ST» documents bearing the code «LIMITE» which relate to that act. It sends the Directorate-General concerned the list for its opinion before releasing the documents.
- (b) documents made directly accessible to the public pursuant to the above rules shall bear not only the initial code «LIMITE», but also an electronic stamp indicating their change in status.

21 The above list of criteria is not exhaustive. The decision on whether to make a document of this kind directly accessible requires careful appraisal of all the relevant aspects of the case. If in doubt, consult DG F or the Legal Service.

22 This is without prejudice to the Council's appraisal of whether such a document may be disclosed upon application for access by an individual, pursuant to Regulation No 1049/2001.

GENERAL SECRETARIAT OF THE COUNCIL	
STAFF NOTE	
Department responsible: DG A 3 Translation and Document Production Central Coordination Tel. 7637	 49/06 21/03/2006

Subject: Treatment of LIMITE documents

Delegations have just been sent a reminder of the rules on the handling of documents marked LIMITE (see [5847/06](#)). That note explains in particular that documents so marked:

- are intended for the internal use of Member States' national administrations or for Commission officials. Their contents are not published on the Council's website;
- may, depending on their subject code, also be distributed to acceding States or to certain EU institutions or bodies (see [SN 1001/06](#) concerning document distribution).

The contents of LIMITE documents may be made public only by decision of the relevant Council officials or, in certain specific cases, by decision of the Council (see Regulation (EC) No 1049/2001 and the Council's Rules of Procedure). They may be released to non-member countries or international organisations by decision of the Council only.

In order for these rules to be applied more effectively, the marking "LIMITE", shown beneath the document number on the front page, will in future also appear in the footer on each page of the document. The [templates](#) available via ATRIUM will be adjusted accordingly as from 28 March 2006 (except for documents in Legiswrite, which will be adjusted at a later date).

M. Lacerda



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 16 March 2006

5847/06

LIMITE

**CAB 11
CSC 13**

INFORMATION NOTE

From : The General Secretariat
To : Delegations
Subject : Handling of documents marked LIMITE

1. As far as distribution and handling is concerned, Council documents fall into three categories:
 - (i) Documents which bear no distribution or classification marking, and which are therefore automatically accessible to the public;
 - (ii) Documents which are classified and bear one of the four classification markings set out in the Council Security Regulations (TRÈS SECRET UE/EU TOP SECRET, SECRET UE, CONFIDENTIEL UE or RESTREINT UE); and
 - (iii) Documents whose distribution is internal to the Council, its members, the Commission and certain other EU institutions and bodies. Such official Council documents bear the distribution marking "LIMITE" on the front page, and in the footer of all subsequent pages. Note that "LIMITE" is a distribution marking, and not a classification level.

2. Documents marked LIMITE may be given to any member of a national administration of a Member State and the Commission. Certain LIMITE documents may be given to acceding States and to other EU institutions and bodies, depending on the "code matière" on the front page of the document. LIMITE documents may not be given to any other person, the media or the general public without specific authorisation (see below).

3. No technical protection measures need to be applied to protect documents marked LIMITE when handled or transmitted by IT systems or networks¹.
4. However, the following procedural rules apply to LIMITE documents:
 - the content of LIMITE documents must not be published, either by read or by download access, in the Internet on a website that is accessible by any Internet user;
 - when sending LIMITE documents by e-mail, special care should be taken to ensure that e-mails are only sent to recipients entitled to receive them;
 - LIMITE documents do not require any specific physical protection measures, other than not distributing them to persons not entitled to receive them;
 - LIMITE documents may be disposed of without any requirement for physical destruction.
5. LIMITE documents may only be released to representatives of third States or international organisations by decision of the Council, or by persons duly authorised to release such documents under a Council decision.
6. LIMITE Council documents may only be made public by decision of the competent Council officials, or, where relevant, by decision of the Council, on the basis of criteria laid down in Regulation (EC) 1049/2001 and in the Council's rules of procedure. Staff of a national administration or the Commission may not themselves decide to make LIMITE documents public. The Secretariat is examining ways of marking the electronic version of all official documents automatically sent to each delegation to allow identification of the source of any leaks.

¹ Other than the requirement set out in Section XI (2) of the Council Security Regulations for all systems to protect the integrity and availability of those systems and the information they contain.

I

(Acts whose publication is obligatory)

**REGULATION (EC) No 45/2001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 18 December 2000
on the protection of individuals with regard to the processing of personal data by the Community
institutions and bodies and on the free movement of such data**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community, and in particular Article 286 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social
Committee ⁽²⁾,

Acting in accordance with the procedure laid down in Article
251 of the Treaty ⁽³⁾,

Whereas:

(1) Article 286 of the Treaty requires the application to the
Community institutions and bodies of the Community
acts on the protection of individuals with regard to the
processing of personal data and the free movement of
such data.

(2) A fully-fledged system of protection of personal data not
only requires the establishment of rights for data
subjects and obligations for those who process personal
data, but also appropriate sanctions for offenders and
monitoring by an independent supervisory body.

(3) Article 286(2) of the Treaty requires the establishment
of an independent supervisory body responsible for
monitoring the application of such Community acts to
Community institutions and bodies.

(4) Article 286(2) of the Treaty requires the adoption of any
other relevant provisions as appropriate.

(5) A Regulation is necessary to provide the individual with
legally enforceable rights, to specify the data processing
obligations of the controllers within the Community
institutions and bodies, and to create an independent
supervisory authority responsible for monitoring the
processing of personal data by the Community institu-
tions and bodies.

(6) The Working Party on the Protection of Individuals with
regard to the Processing of Personal Data set up under
Article 29 of Directive 95/46/EC of the European Parlia-
ment 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 ⁽⁴⁾ has been consulted.

(7) The persons to be protected are those whose personal
data are processed by Community institutions or bodies
in any context whatsoever, for example because they are
employed by those institutions or bodies.

(8) The principles of data protection should apply to any
information concerning an identified or identifiable
person. To determine whether a person is identifiable,
account should be taken of all the means likely to be
reasonably used either by the controller or by any other
person to identify the said person. The principles of
protection should not apply to data rendered anonym-
ous in such a way that the data subject is no longer
identifiable.

(9) Directive 95/46/EC requires Member States to protect
the fundamental rights and freedoms of natural persons,
and in particular their right to privacy with respect to
the processing of personal data, in order to ensure the
free flow of personal data in the Community.

⁽¹⁾ OJ C 376E, 28.12.1999, p. 24.

⁽²⁾ OJ C 51, 23.2.2000, p. 48.

⁽³⁾ Opinion of the European Parliament of 14 November 2000 and
Council Decision of 30 November 2000.

⁽⁴⁾ OJ L 281, 23.11.1995, p. 31.

- (10) Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector⁽¹⁾ specifies and adds to Directive 95/46/EC with respect to the processing of personal data in the telecommunications sector.
- (11) Various other Community measures, including measures on mutual assistance between national authorities and the Commission, are also designed to specify and add to Directive 95/46/EC in the sectors to which they relate.
- (12) Consistent and homogeneous application of the rules for the protection of individuals' fundamental rights and freedoms with regard to the processing of personal data should be ensured throughout the Community.
- (13) The aim is to ensure both effective compliance with the rules governing the protection of individuals' fundamental rights and freedoms and the free flow of personal data between Member States and the Community institutions and bodies or between the Community institutions and bodies for purposes connected with the exercise of their respective competences.
- (14) To this end measures should be adopted which are binding on the Community institutions and bodies. These measures should apply to all processing of personal data by all Community institutions and bodies insofar as such processing is carried out in the exercise of activities all or part of which fall within the scope of Community law.
- (15) Where such processing is carried out by Community institutions or bodies in the exercise of activities falling outside the scope of this Regulation, in particular those laid down in Titles V and VI of the Treaty on European Union, the protection of individuals' fundamental rights and freedoms shall be ensured with due regard to Article 6 of the Treaty on European Union. Access to documents, including conditions for access to documents containing personal data, is governed by the rules adopted on the basis of Article 255 of the EC Treaty the scope of which includes Titles V and VI of the Treaty on European Union.
- (16) The measures should not apply to bodies established outside the Community framework, nor should the European Data Protection Supervisor be competent to monitor the processing of personal data by such bodies.
- (17) The effectiveness of the protection of individuals with regard to the processing of personal data in the Union presupposes the consistency of the relevant rules and procedures applicable to activities pertaining to different legal contexts. The development of fundamental principles on the protection of personal data in the fields of judicial cooperation in criminal affairs and police and customs cooperation, and the setting-up of a secretariat for the joint supervisory authorities established by the Europol Convention, the Convention on the Use of Information Technology for Customs Purposes and the Schengen Convention represent a first step in this regard.
- (18) This Regulation should not affect the rights and obligations of Member States under Directives 95/46/EC and 97/66/EC. It is not intended to change existing procedures and practices lawfully implemented by the Member States in the field of national security, prevention of disorder or prevention, detection, investigation and prosecution of criminal offences in compliance with the Protocol on Privileges and Immunities of the European Communities and with international law.
- (19) The Community institutions and bodies should inform the competent authorities in the Member States when they consider that communications on their telecommunications networks should be intercepted, in keeping with the national provisions applicable.
- (20) The provisions applicable to the Community institutions and bodies should correspond to those provisions laid down in connection with the harmonisation of national laws or the implementation of other Community policies, notably in the mutual assistance sphere. It may be necessary, however, to specify and add to those provisions when it comes to ensuring protection in the case of the processing of personal data by the Community institutions and bodies.
- (21) This holds true for the rights of the individuals whose data are being processed, for the obligations of the Community institutions and bodies doing the processing, and for the powers to be vested in the independent supervisory authority responsible for ensuring that this Regulation is properly applied.
- (22) The rights accorded the data subject and the exercise thereof should not affect the obligations placed on the controller.
- (23) The independent supervisory authority should exercise its supervisory functions in accordance with the Treaty and in compliance with human rights and fundamental freedoms. It should conduct its enquiries in compliance with the Protocol on Privileges and Immunities and with the Staff Regulations of Officials of the European Communities and the conditions of employment applicable to Other Servants of the Communities.
- (24) The necessary technical measures should be adopted to allow access to the registers of processing operations carried out by Data Protection Officers through the independent supervisory authority.

⁽¹⁾ OJ L 24, 30.1.1998, p. 1.

- (25) The decisions of the independent supervisory authority regarding exemptions, guarantees, authorisations and conditions relating to data processing operations, as defined in this Regulation, should be published in the activities report. Independently of the publication of an annual activities report, the independent supervisory authority may publish reports on specific subjects.
- (26) Certain processing operations likely to present specific risks with respect to the rights and freedoms of data subjects are subject to prior checking by the independent supervisory authority. The opinion given in the context of such prior checking, including the opinion resulting from failure to reply within the set period, should be without prejudice to the subsequent exercise by the independent supervisory authority of its powers with regard to the processing operation in question.
- (27) Processing of personal data for the performance of tasks carried out in the public interest by the Community institutions and bodies includes the processing of personal data necessary for the management and functioning of those institutions and bodies.
- (28) In certain cases the processing of data should be authorised by Community provisions or by acts transposing Community provisions. Nevertheless, in the transitional period during which such provisions do not exist, pending their adoption, the European Data Protection Supervisor may authorise processing of such data provided that adequate safeguards are adopted. In so doing, he should take account in particular of the provisions adopted by the Member States to deal with similar cases.
- (29) These cases concern the processing of data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership and the processing of data concerning health or sex life which are necessary for the purposes of complying with the specific rights and obligations of the controller in the field of employment law or for reasons of substantial public interest. They also concern the processing of data relating to offences, criminal convictions or security measures and authorisation to apply a decision to the data subject which produces legal effects concerning him or her or significantly affects him or her and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to him or her.
- (30) It may be necessary to monitor the computer networks operated under the control of the Community institutions and bodies for the purposes of prevention of unauthorised use. The European Data Protection Supervisor should determine whether and under what conditions that is possible.
- (31) Liability arising from any breach of this Regulation is governed by the second paragraph of Article 288 of the Treaty.
- (32) In each Community institution or body one or more Data Protection Officers should ensure that the provisions of this Regulation are applied and should advise controllers on fulfilling their obligations.
- (33) Under Article 21 of Council Regulation (EC) No 322/97 of 17 February 1997 on Community statistics ⁽¹⁾, that Regulation is to apply without prejudice to Directive 95/46/EC.
- (34) Under Article 8(8) of Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank ⁽²⁾, that Regulation is to apply without prejudice to Directive 95/46/EC.
- (35) Under Article 1(2) of Council Regulation (Euratom, EEC) No 1588/90 of 11 June 1990 on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities ⁽³⁾, that Regulation does not derogate from the special Community or national provisions concerning the safeguarding of confidentiality other than statistical confidentiality.
- (36) This Regulation does not aim to limit Member States' room for manoeuvre in drawing up their national laws on data protection under Article 32 of Directive 95/46/EC, in accordance with Article 249 of the Treaty,
- HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Object of the Regulation

1. In accordance with this Regulation, the institutions and bodies set up by, or on the basis of, the Treaties establishing the European Communities, hereinafter referred to as 'Community institutions or

⁽¹⁾ OJ L 52, 22.2.1997, p. 1.

⁽²⁾ OJ L 318, 27.11.1998, p. 8.

⁽³⁾ OJ L 151, 15. 6.1990, p. 1. Regulation as amended by Regulation (EC) No 322/97 (OJ L 52, 22.2.1997, p. 1).

bodies', shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data and shall neither restrict nor prohibit the free flow of personal data between themselves or to recipients subject to the national law of the Member States implementing Directive 95/46/EC.

2. The independent supervisory authority established by this Regulation, hereinafter referred to as the European Data Protection Supervisor, shall monitor the application of the provisions of this Regulation to all processing operations carried out by a Community institution or body.

Article 2

Definitions

For the purposes of this Regulation:

- (a) 'personal data' shall mean any information relating to an identified or identifiable natural person hereinafter referred to as 'data subject'; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity;
- (b) 'processing of personal data' hereinafter referred to as 'processing' shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;
- (c) 'personal data filing system' hereinafter referred to as 'filing system' shall mean any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis;
- (d) 'controller' shall mean the Community institution or body, the Directorate-General, the unit or any other organisational entity which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by a specific Community act, the controller or the specific criteria for its nomination may be designated by such Community act;
- (e) 'processor' shall mean a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;
- (f) 'third party' shall mean a natural or legal person, public authority, agency or body other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor, are authorised to process the data;
- (g) 'recipient' shall mean a natural or legal person, public authority, agency or any other body to whom data are disclosed, whether a third party or not; however, authorities which may receive data in the framework of a particular inquiry shall not be regarded as recipients;
- (h) 'the data subject's consent' shall mean any freely given specific and informed indication of his or her wishes by which the data subject signifies his or her agreement to personal data relating to him or her being processed.

Article 3

Scope

1. This Regulation shall apply to the processing of personal data by all Community institutions and bodies insofar as such processing is carried out in the exercise of activities all or part of which fall within the scope of Community law.

2. This Regulation shall apply to the processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which form part of a filing system or are intended to form part of a filing system.

CHAPTER II

GENERAL RULES ON THE LAWFULNESS OF THE PROCESSING OF PERSONAL DATA

SECTION 1

PRINCIPLES RELATING TO DATA QUALITY

Article 4

Data quality

1. Personal data must be:
 - (a) processed fairly and lawfully;
 - (b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes. Further processing of personal data for historical, statistical or scientific purposes shall not be considered incompatible provided that the controller provides appropriate safeguards, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual;
 - (c) adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed;
 - (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified;
 - (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed. The Community institution or body shall lay down that personal data which are to be stored for longer periods for historical, statistical or scientific use should be kept either in anonymous form only or, if that is not possible, only with the identity of the data subjects encrypted. In any event, the data shall not be used for any purpose other than for historical, statistical or scientific purposes.
2. It shall be for the controller to ensure that paragraph 1 is complied with.

SECTION 2

CRITERIA FOR MAKING DATA PROCESSING LEGITIMATE

Article 5

Lawfulness of processing

Personal data may be processed only if:

- (a) processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the Community institution or body or in a third party to whom the data are disclosed, or

- (b) processing is necessary for compliance with a legal obligation to which the controller is subject, or
- (c) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract, or
- (d) the data subject has unambiguously given his or her consent, or
- (e) processing is necessary in order to protect the vital interests of the data subject.

Article 6

Change of purpose

Without prejudice to Articles 4, 5 and 10:

1. Personal data shall only be processed for purposes other than those for which they have been collected if the change of purpose is expressly permitted by the internal rules of the Community institution or body.
2. Personal data collected exclusively for ensuring the security or the control of the processing systems or operations shall not be used for any other purpose, with the exception of the prevention, investigation, detection and prosecution of serious criminal offences.

Article 7

Transfer of personal data within or between Community institutions or bodies

Without prejudice to Articles 4, 5, 6 and 10:

1. Personal data shall only be transferred within or to other Community institutions or bodies if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient.
2. Where the data are transferred following a request from the recipient, both the controller and the recipient shall bear the responsibility for the legitimacy of this transfer.

The controller shall be required to verify the competence of the recipient and to make a provisional evaluation of the necessity for the transfer of the data. If doubts arise as to this necessity, the controller shall seek further information from the recipient.

The recipient shall ensure that the necessity for the transfer of the data can be subsequently verified.

3. The recipient shall process the personal data only for the purposes for which they were transmitted.

Article 8

Transfer of personal data to recipients, other than Community institutions and bodies, subject to Directive 95/46/EC

Without prejudice to Articles 4, 5, 6 and 10, personal data shall only be transferred to recipients subject to the national law adopted for the implementation of Directive 95/46/EC,

- (a) if the recipient establishes that the data are necessary for the performance of a task carried out in the public interest or subject to the exercise of public authority, or
- (b) if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced.

Article 9

Transfer of personal data to recipients, other than Community institutions and bodies, which are not subject to Directive 95/46/EC

1. Personal data shall only be transferred to recipients, other than Community institutions and bodies, which are not subject to national law adopted pursuant to Directive 95/46/EC, if an adequate level of protection is ensured in the country of the recipient or within the recipient international organisation and the data are transferred solely to allow tasks covered by the competence of the controller to be carried out.

2. The adequacy of the level of protection afforded by the third country or international organisation in question shall be assessed in the light of all the circumstances surrounding a data transfer operation or set of data transfer operations; particular consideration shall be given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the recipient third country or recipient international organisation, the rules of law, both general and sectoral, in force in the third country or international organisation in question and the professional rules and security measures which are complied with in that third country or international organisation.

3. The Community institutions and bodies shall inform the Commission and the European Data Protection Supervisor of cases where they consider the third country or international organisation in question does not ensure an adequate level of protection within the meaning of paragraph 2.

4. The Commission shall inform the Member States of any cases as referred to in paragraph 3.

5. The Community institutions and bodies shall take the necessary measures to comply with decisions taken by the Commission when it establishes, pursuant to Article 25(4) and (6) of Directive 95/46/EC, that a third country or an international organisation ensures or does not ensure an adequate level of protection.

6. By way of derogation from paragraphs 1 and 2, the Community institution or body may transfer personal data if:

- (a) the data subject has given his or her consent unambiguously to the proposed transfer; or
- (b) the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken in response to the data subject's request; or
- (c) the transfer is necessary for the conclusion or performance of a contract entered into in the interest of the data subject between the controller and a third party; or
- (d) the transfer is necessary or legally required on important public interest grounds, or for the establishment, exercise or defence of legal claims; or
- (e) the transfer is necessary in order to protect the vital interests of the data subject; or
- (f) the transfer is made from a register which, according to Community law, is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate a legitimate interest, to the extent that the conditions laid down in Community law for consultation are fulfilled in the particular case.

7. Without prejudice to paragraph 6, the European Data Protection Supervisor may authorise a transfer or a set of transfers of personal data to a third country or international organisation which does not ensure an adequate level of protection within the meaning of paragraphs 1 and 2, where the controller adduces adequate safeguards with respect to the protection of the privacy and fundamental rights and freedoms of individuals and as regards the exercise of the corresponding rights; such safeguards may in particular result from appropriate contractual clauses.

8. The Community institutions and bodies shall inform the European Data Protection Supervisor of categories of cases where they have applied paragraphs 6 and 7.

SECTION 3

SPECIAL CATEGORIES OF PROCESSING

Article 10

The processing of special categories of data

1. The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and of data concerning health or sex life, are prohibited.
2. Paragraph 1 shall not apply where:
 - (a) the data subject has given his or her express consent to the processing of those data, except where the internal rules of the Community institution or body provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject's giving his or her consent, or
 - (b) processing is necessary for the purposes of complying with the specific rights and obligations of the controller in the field of employment law insofar as it is authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof, or, if necessary, insofar as it is agreed upon by the European Data Protection Supervisor, subject to adequate safeguards, or
 - (c) processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his or her consent, or
 - (d) processing relates to data which are manifestly made public by the data subject or is necessary for the establishment, exercise or defence of legal claims, or
 - (e) processing is carried out in the course of its legitimate activities with appropriate safeguards by a non-profit-seeking body which constitutes an entity integrated in a Community institution or body, not subject to national data protection law by virtue of Article 4 of Directive 95/46/EC, and with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members of this body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed to a third party without the consent of the data subjects.
3. Paragraph 1 shall not apply where processing of the data is required for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy.
4. Subject to the provision of appropriate safeguards, and for reasons of substantial public interest, exemptions in addition to those laid down in paragraph 2 may be laid down by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or, if necessary, by decision of the European Data Protection Supervisor.
5. Processing of data relating to offences, criminal convictions or security measures may be carried out only if authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or, if necessary, by the European Data Protection Supervisor, subject to appropriate specific safeguards.
6. The European Data Protection Supervisor shall determine the conditions under which a personal number or other identifier of general application may be processed by a Community institution or body.

SECTION 4

INFORMATION TO BE GIVEN TO THE DATA SUBJECT

Article 11

Information to be supplied where the data have been obtained from the data subject

1. The controller shall provide a data subject from whom data relating to himself/herself are collected with at least the following information, except where he or she already has it:

- (a) the identity of the controller;
- (b) the purposes of the processing operation for which the data are intended;
- (c) the recipients or categories of recipients of the data;
- (d) whether replies to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply;
- (e) the existence of the right of access to, and the right to rectify, the data concerning him or her;
- (f) any further information such as:
 - (i) the legal basis of the processing operation for which the data are intended,
 - (ii) the time-limits for storing the data,
 - (iii) the right to have recourse at any time to the European Data Protection Supervisor,

insofar as such further information is necessary, having regard to the specific circumstances in which the data are collected, to guarantee fair processing in respect of the data subject.

2. By way of derogation from paragraph 1, the provision of information or part of it, except for the information referred to in paragraph 1(a), (b) and (d), may be deferred as long as this is necessary for statistical purposes. The information must be provided as soon as the reason for which the information is withheld ceases to exist.

Article 12

Information to be supplied where the data have not been obtained from the data subject

1. Where the data have not been obtained from the data subject, the controller shall at the time of undertaking the recording of personal data or, if a disclosure to a third party is envisaged, no later than the time when the data are first disclosed, provide the data subject with at least the following information, except where he or she already has it:

- (a) the identity of the controller;
- (b) the purposes of the processing operation;
- (c) the categories of data concerned;
- (d) the recipients or categories of recipients;
- (e) the existence of the right of access to, and the right to rectify, the data concerning him or her;
- (f) any further information such as:
 - (i) the legal basis of the processing operation for which the data are intended,
 - (ii) the time-limits for storing the data,
 - (iii) the right to have recourse at any time to the European Data Protection Supervisor,

(iv) the origin of the data, except where the controller cannot disclose this information for reasons of professional secrecy,

insofar as such further information is necessary, having regard to the specific circumstances in which the data are processed, to guarantee fair processing in respect of the data subject.

2. Paragraph 1 shall not apply where, in particular for processing for statistical purposes or for the purposes of historical or scientific research, the provision of such information proves impossible or would involve a disproportionate effort or if recording or disclosure is expressly laid down by Community law. In these cases the Community institution or body shall provide for appropriate safeguards after consulting the European Data Protection Supervisor.

SECTION 5

RIGHTS OF THE DATA SUBJECT

Article 13

Right of access

The data subject shall have the right to obtain, without constraint, at any time within three months from the receipt of the request and free of charge from the controller:

- (a) confirmation as to whether or not data related to him or her are being processed;
- (b) information at least as to the purposes of the processing operation, the categories of data concerned, and the recipients or categories of recipients to whom the data are disclosed;
- (c) communication in an intelligible form of the data undergoing processing and of any available information as to their source;
- (d) knowledge of the logic involved in any automated decision process concerning him or her.

Article 14

Rectification

The data subject shall have the right to obtain from the controller the rectification without delay of inaccurate or incomplete personal data.

Article 15

Blocking

1. The data subject shall have the right to obtain from the controller the blocking of data where:

- (a) their accuracy is contested by the data subject, for a period enabling the controller to verify the accuracy, including the completeness, of the data, or;
- (b) the controller no longer needs them for the accomplishment of its tasks but they have to be maintained for purposes of proof, or;
- (c) the processing is unlawful and the data subject opposes their erasure and demands their blocking instead.

2. In automated filing systems blocking shall in principle be ensured by technical means. The fact that the personal data are blocked shall be indicated in the system in such a way that it becomes clear that the personal data may not be used.

3. Personal data blocked pursuant to this Article shall, with the exception of their storage, only be processed for purposes of proof, or with the data subject's consent, or for the protection of the rights of a third party.

4. The data subject who requested and obtained the blocking of his or her data shall be informed by the controller before the data are unblocked.

Article 16

Erasure

The data subject shall have the right to obtain from the controller the erasure of data if their processing is unlawful, particularly where the provisions of Sections 1, 2 and 3 of Chapter II have been infringed.

Article 17

Notification to third parties

The data subject shall have the right to obtain from the controller the notification to third parties to whom the data have been disclosed of any rectification, erasure or blocking pursuant to Articles 13 to 16 unless this proves impossible or involves a disproportionate effort.

Article 18

The data subject's right to object

The data subject shall have the right:

- (a) to object at any time, on compelling legitimate grounds relating to his or her particular situation, to the processing of data relating to him or her, except in the cases covered by Article 5(b), (c) and (d). Where there is a justified objection, the processing in question may no longer involve those data;
- (b) to be informed before personal data are disclosed for the first time to third parties or before they are used on their behalf for the purposes of direct marketing, and to be expressly offered the right to object free of charge to such disclosure or use.

Article 19

Automated individual decisions

The data subject shall have the right not to be subject to a decision which produces legal effects concerning him or her or significantly affects him or her and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to him or her, such as his or her performance at work, reliability or conduct, unless the decision is expressly authorised pursuant to national or Community legislation or, if necessary, by the European Data Protection Supervisor. In either case, measures to safeguard the data subject's legitimate interests, such as arrangements allowing him or her to put his or her point of view, must be taken.

SECTION 6

EXEMPTIONS AND RESTRICTIONS

Article 20

Exemptions and restrictions

1. The Community institutions and bodies may restrict the application of Article 4(1), Article 11, Article 12(1), Articles 13 to 17 and Article 37(1) where such restriction constitutes a necessary measure to safeguard:

- (a) the prevention, investigation, detection and prosecution of criminal offences;
- (b) an important economic or financial interest of a Member State or of the European Communities, including monetary, budgetary and taxation matters;
- (c) the protection of the data subject or of the rights and freedoms of others;

- (d) the national security, public security or defence of the Member States;
- (e) a monitoring, inspection or regulatory task connected, even occasionally, with the exercise of official authority in the cases referred to in (a) and (b).

2. Articles 13 to 16 shall not apply when data are processed solely for purposes of scientific research or are kept in personal form for a period which does not exceed the period necessary for the sole purpose of compiling statistics, provided that there is clearly no risk of breaching the privacy of the data subject and that the controller provides adequate legal safeguards, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.

3. If a restriction provided for by paragraph 1 is imposed, the data subject shall be informed, in accordance with Community law, of the principal reasons on which the application of the restriction is based and of his or her right to have recourse to the European Data Protection Supervisor.

4. If a restriction provided for by paragraph 1 is relied upon to deny access to the data subject, the European Data Protection Supervisor shall, when investigating the complaint, only inform him or her of whether the data have been processed correctly and, if not, whether any necessary corrections have been made.

5. Provision of the information referred to under paragraphs 3 and 4 may be deferred for as long as such information would deprive the restriction imposed by paragraph 1 of its effect.

SECTION 7

CONFIDENTIALITY AND SECURITY OF PROCESSING

Article 21

Confidentiality of processing

A person employed with a Community institution or body and any Community institution or body itself acting as processor, with access to personal data, shall not process them except on instructions from the controller, unless required to do so by national or Community law.

Article 22

Security of processing

1. Having regard to the state of the art and the cost of their implementation, the controller shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected.

Such measures shall be taken in particular to prevent any unauthorised disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and to prevent all other unlawful forms of processing.

2. Where personal data are processed by automated means, measures shall be taken as appropriate in view of the risks in particular with the aim of:

- (a) preventing any unauthorised person from gaining access to computer systems processing personal data;
- (b) preventing any unauthorised reading, copying, alteration or removal of storage media;
- (c) preventing any unauthorised memory inputs as well as any unauthorised disclosure, alteration or erasure of stored personal data;

- (d) preventing unauthorised persons from using data-processing systems by means of data transmission facilities;
- (e) ensuring that authorised users of a data-processing system can access no personal data other than those to which their access right refers;
- (f) recording which personal data have been communicated, at what times and to whom;
- (g) ensuring that it will subsequently be possible to check which personal data have been processed, at what times and by whom;
- (h) ensuring that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
- (i) ensuring that, during communication of personal data and during transport of storage media, the data cannot be read, copied or erased without authorisation;
- (j) designing the organisational structure within an institution or body in such a way that it will meet the special requirements of data protection.

Article 23

Processing of personal data on behalf of controllers

1. Where a processing operation is carried out on its behalf, the controller shall choose a processor providing sufficient guarantees in respect of the technical and organisational security measures required by Article 22 and ensure compliance with those measures.
2. The carrying out of a processing operation by way of a processor shall be governed by a contract or legal act binding the processor to the controller and stipulating in particular that:
 - (a) the processor shall act only on instructions from the controller;
 - (b) the obligations set out in Articles 21 and 22 shall also be incumbent on the processor unless, by virtue of Article 16 or Article 17(3), second indent, of Directive 95/46/EC, the processor is already subject to obligations with regard to confidentiality and security laid down in the national law of one of the Member States.
3. For the purposes of keeping proof, the parts of the contract or the legal act relating to data protection and the requirements relating to the measures referred to in Article 22 shall be in writing or in another equivalent form.

SECTION 8

DATA PROTECTION OFFICER

Article 24

Appointment and tasks of the Data Protection Officer

1. Each Community institution and Community body shall appoint at least one person as data protection officer. That person shall have the task of:
 - (a) ensuring that controllers and data subjects are informed of their rights and obligations pursuant to this Regulation;
 - (b) responding to requests from the European Data Protection Supervisor and, within the sphere of his or her competence, cooperating with the European Data Protection Supervisor at the latter's request or on his or her own initiative;
 - (c) ensuring in an independent manner the internal application of the provisions of this Regulation;

- (d) keeping a register of the processing operations carried out by the controller, containing the items of information referred to in Article 25(2);
- (e) notifying the European Data Protection Supervisor of the processing operations likely to present specific risks within the meaning of Article 27.

That person shall thus ensure that the rights and freedoms of the data subjects are unlikely to be adversely affected by the processing operations.

2. The Data Protection Officer shall be selected on the basis of his or her personal and professional qualities and, in particular, his or her expert knowledge of data protection.

3. The selection of the Data Protection Officer shall not be liable to result in a conflict of interests between his or her duty as Data Protection Officer and any other official duties, in particular in relation to the application of the provisions of this Regulation.

4. The Data Protection Officer shall be appointed for a term of between two and five years. He or she shall be eligible for reappointment up to a maximum total term of ten years. He or she may be dismissed from the post of Data Protection Officer by the Community institution or body which appointed him or her only with the consent of the European Data Protection Supervisor, if he or she no longer fulfils the conditions required for the performance of his or her duties.

5. After his or her appointment the Data Protection Officer shall be registered with the European Data Protection Supervisor by the institution or body which appointed him or her.

6. The Community institution or body which appointed the Data Protection Officer shall provide him or her with the staff and resources necessary to carry out his or her duties.

7. With respect to the performance of his or her duties, the Data Protection Officer may not receive any instructions.

8. Further implementing rules concerning the Data Protection Officer shall be adopted by each Community institution or body in accordance with the provisions in the Annex. The implementing rules shall in particular concern the tasks, duties and powers of the Data Protection Officer.

Article 25

Notification to the Data Protection Officer

1. The controller shall give prior notice to the Data Protection Officer of any processing operation or set of such operations intended to serve a single purpose or several related purposes.
2. The information to be given shall include:
- (a) the name and address of the controller and an indication of the organisational parts of an institution or body entrusted with the processing of personal data for a particular purpose;
 - (b) the purpose or purposes of the processing;
 - (c) a description of the category or categories of data subjects and of the data or categories of data relating to them;
 - (d) the legal basis of the processing operation for which the data are intended;
 - (e) the recipients or categories of recipient to whom the data might be disclosed;
 - (f) a general indication of the time limits for blocking and erasure of the different categories of data;
 - (g) proposed transfers of data to third countries or international organisations;
 - (h) a general description allowing a preliminary assessment to be made of the appropriateness of the measures taken pursuant to Article 22 to ensure security of processing.

3. Any change affecting information referred to in paragraph 2 shall be notified promptly to the Data Protection Officer.

Article 26

Register

A register of processing operations notified in accordance with Article 25 shall be kept by each Data Protection Officer.

The registers shall contain at least the information referred to in Article 25(2)(a) to (g). The registers may be inspected by any person directly or indirectly through the European Data Processing Supervisor.

SECTION 9

PRIOR CHECKING BY THE EUROPEAN DATA PROTECTION SUPERVISOR AND OBLIGATION TO COOPERATE

Article 27

Prior checking

1. Processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes shall be subject to prior checking by the European Data Protection Supervisor.

2. The following processing operations are likely to present such risks:

- (a) processing of data relating to health and to suspected offences, offences, criminal convictions or security measures;
- (b) processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct;
- (c) processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes;
- (d) processing operations for the purpose of excluding individuals from a right, benefit or contract.

3. The prior checks shall be carried out by the European Data Protection Supervisor following receipt of a notification from the Data Protection Officer who, in case of doubt as to the need for prior checking, shall consult the European Data Protection Supervisor.

4. The European Data Protection Supervisor shall deliver his or her opinion within two months following receipt of the notification. This period may be suspended until the European Data Protection Supervisor has obtained any further information that he or she may have requested. When the complexity of the matter so requires, this period may also be extended for a further two months, by decision of the European Data Protection Supervisor. This decision shall be notified to the controller prior to expiry of the initial two-month period.

If the opinion has not been delivered by the end of the two-month period, or any extension thereof, it shall be deemed to be favourable.

If the opinion of the European Data Protection Supervisor is that the notified processing may involve a breach of any provision of this Regulation, he or she shall where appropriate make proposals to avoid such breach. Where the controller does not modify the processing operation accordingly, the European Data Protection Supervisor may exercise the powers granted to him or her under Article 47(1).

5. The European Data Protection Supervisor shall keep a register of all processing operations that have been notified to him or her pursuant to paragraph 2. The register shall contain the information referred to in Article 25 and shall be open to public inspection.

*Article 28***Consultation**

1. The Community institutions and bodies shall inform the European Data Protection Supervisor when drawing up administrative measures relating to the processing of personal data involving a Community institution or body alone or jointly with others.
2. When it adopts a legislative proposal relating to the protection of individuals' rights and freedoms with regard to the processing of personal data, the Commission shall consult the European Data Protection Supervisor.

*Article 29***Obligation to provide information**

The Community institutions and bodies shall inform the European Data Protection Supervisor of the measures taken further to his or her decisions or authorisations as referred to in Article 46(h).

*Article 30***Obligation to cooperate**

At his or her request, controllers shall assist the European Data Protection Supervisor in the performance of his or her duties, in particular by providing the information referred to in Article 47(2)(a) and by granting access as provided in Article 47(2)(b).

*Article 31***Obligation to react to allegations**

In response to the European Data Protection Supervisor's exercise of his or her powers under Article 47(1)(b), the controller concerned shall inform the Supervisor of its views within a reasonable period to be specified by the Supervisor. The reply shall also include a description of the measures taken, if any, in response to the remarks of the European Data Protection Supervisor.

CHAPTER III

REMEDIES*Article 32***Remedies**

1. The Court of Justice of the European Communities shall have jurisdiction to hear all disputes which relate to the provisions of this Regulation, including claims for damages.
2. Without prejudice to any judicial remedy, every data subject may lodge a complaint with the European Data Protection Supervisor if he or she considers that his or her rights under Article 286 of the Treaty have been infringed as a result of the processing of his or her personal data by a Community institution or body.

In the absence of a response by the European Data Protection Supervisor within six months, the complaint shall be deemed to have been rejected.

3. Actions against decisions of the European Data Protection Supervisor shall be brought before the Court of Justice of the European Communities.
4. Any person who has suffered damage because of an unlawful processing operation or any action incompatible with this Regulation shall have the right to have the damage made good in accordance with Article 288 of the Treaty.

*Article 33***Complaints by Community staff**

Any person employed with a Community institution or body may lodge a complaint with the European Data Protection Supervisor regarding an alleged breach of the provisions of this Regulation governing the processing of personal data, without acting through official channels. No-one shall suffer prejudice on account of a complaint lodged with the European Data Protection Supervisor alleging a breach of the provisions governing the processing of personal data.

CHAPTER IV

PROTECTION OF PERSONAL DATA AND PRIVACY IN THE CONTEXT OF INTERNAL TELECOMMUNICATIONS NETWORKS*Article 34***Scope**

Without prejudice to the other provisions of this Regulation, this Chapter shall apply to the processing of personal data in connection with the use of telecommunications networks or terminal equipment operated under the control of a Community institution or body.

For the purposes of this Chapter, 'user' shall mean any natural person using a telecommunications network or terminal equipment operated under the control of a Community institution or body.

*Article 35***Security**

1. The Community institutions and bodies shall take appropriate technical and organisational measures to safeguard the secure use of the telecommunications networks and terminal equipment, if necessary in conjunction with the providers of publicly available telecommunications services or the providers of public telecommunications networks. Having regard to the state of the art and the cost of their implementation, these measures shall ensure a level of security appropriate to the risk presented.

2. In the event of any particular risk of a breach of the security of the network and terminal equipment, the Community institution or body concerned shall inform users of the existence of that risk and of any possible remedies and alternative means of communication.

*Article 36***Confidentiality of communications**

Community institutions and bodies shall ensure the confidentiality of communications by means of telecommunications networks and terminal equipment, in accordance with the general principles of Community law.

*Article 37***Traffic and billing data**

1. Without prejudice to the provisions of paragraphs 2, 3 and 4, traffic data relating to users which are processed and stored to establish calls and other connections over the telecommunications network shall be erased or made anonymous upon termination of the call or other connection.

2. If necessary, traffic data as indicated in a list agreed by the European Data Protection Supervisor may be processed for the purpose of telecommunications budget and traffic management, including the verification of authorised use of the telecommunications systems. These data shall be erased or made anonymous as soon as possible and no later than six months after collection, unless they need to be kept for a longer period to establish, exercise or defend a right in a legal claim pending before a court.

3. Processing of traffic and billing data shall only be carried out by persons handling billing, traffic or budget management.

4. Users of the telecommunication networks shall have the right to receive non-itemised bills or other records of calls made.

*Article 38***Directories of users**

1. Personal data contained in printed or electronic directories of users and access to such directories shall be limited to what is strictly necessary for the specific purposes of the directory.

2. The Community institutions and bodies shall take all the necessary measures to prevent personal data contained in those directories, regardless of whether they are accessible to the public or not, from being used for direct marketing purposes.

Article 39

Presentation and restriction of calling and connected line identification

1. Where presentation of calling-line identification is offered, the calling user shall have the possibility via a simple means, free of charge, to eliminate the presentation of the calling-line identification.
2. Where presentation of calling-line identification is offered, the called user shall have the possibility via a simple means, free of charge, to prevent the presentation of the calling-line identification of incoming calls.
3. Where presentation of connected-line identification is offered, the called user shall have the possibility via a simple means, free of charge, to eliminate the presentation of the connected-line identification to the calling user.
4. Where presentation of calling or connected-line identification is offered, the Community institutions and bodies shall inform the users thereof and of the possibilities set out in paragraphs 1, 2 and 3.

Article 40

Derogations

Community institutions and bodies shall ensure that there are transparent procedures governing the way in which they may override the elimination of the presentation of calling-line identification:

- (a) on a temporary basis, upon application of a user requesting the tracing of malicious or nuisance calls;
- (b) on a per-line basis for organisational entities dealing with emergency calls, for the purpose of answering such calls.

CHAPTER V

INDEPENDENT SUPERVISORY AUTHORITY: THE EUROPEAN DATA PROTECTION SUPERVISOR

Article 41

European Data Protection Supervisor

1. An independent supervisory authority is hereby established referred to as the European Data Protection Supervisor.
2. With respect to the processing of personal data, the European Data Protection Supervisor shall be responsible for ensuring that the fundamental rights and freedoms of natural persons, and in particular their right to privacy, are respected by the Community institutions and bodies.

The European Data Protection Supervisor shall be responsible for monitoring and ensuring the application of the provisions of this Regulation and any other Community act relating to the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data by a Community institution or body, and for advising Community institutions and bodies and data subjects on all matters concerning the processing of personal data. To these ends he or she shall fulfil the duties provided for in Article 46 and exercise the powers granted in Article 47.

Article 42

Appointment

1. The European Parliament and the Council shall appoint by common accord the European Data Protection Supervisor for a term of five years, on the basis of a list drawn up by the Commission following a public call for candidates.

An Assistant Supervisor shall be appointed in accordance with the same procedure and for the same term, who shall assist the Supervisor in all the latter's duties and act as a replacement when the Supervisor is absent or prevented from attending to them.

2. The European Data Protection Supervisor shall be chosen from persons whose independence is beyond doubt and who are acknowledged as having the experience and skills required to perform the duties of European Data Protection Supervisor, for example because they belong or have belonged to the supervisory authorities referred to in Article 28 of Directive 95/46/EC.
3. The European Data Protection Supervisor shall be eligible for reappointment.
4. Apart from normal replacement or death, the duties of the European Data Protection Supervisor shall end in the event of resignation or compulsory retirement in accordance with paragraph 5.
5. The European Data Protection Supervisor may be dismissed or deprived of his or her right to a pension or other benefits in its stead by the Court of Justice at the request of the European Parliament, the Council or the Commission, if he or she no longer fulfils the conditions required for the performance of his or her duties or if he or she is guilty of serious misconduct.
6. In the event of normal replacement or voluntary resignation, the European Data Protection Supervisor shall nevertheless remain in office until he or she has been replaced.
7. Articles 12 to 15 and 18 of the Protocol on the Privileges and Immunities of the European Communities shall also apply to the European Data Protection Supervisor.
8. Paragraphs 2 to 7 shall apply to the Assistant Supervisor.

Article 43

Regulations and general conditions governing the performance of the European Data Protection Supervisor's duties, staff and financial resources

1. The European Parliament, the Council and the Commission shall by common accord determine the regulations and general conditions governing the performance of the European Data Protection Supervisor's duties and in particular his or her salary, allowances and any other benefits in lieu of remuneration.
2. The budget authority shall ensure that the European Data Protection Supervisor is provided with the human and financial resources necessary for the performance of his or her tasks.
3. The European Data Protection Supervisor's budget shall be shown in a separate budget heading in Section VIII of the general budget of the European Union.
4. The European Data Protection Supervisor shall be assisted by a Secretariat. The officials and the other staff members of the Secretariat shall be appointed by the European Data Protection Supervisor; their superior shall be the European Data Protection Supervisor and they shall be subject exclusively to his or her direction. Their numbers shall be decided each year as part of the budgetary procedure.
5. The officials and the other staff members of the European Data Protection Supervisor's Secretariat shall be subject to the rules and regulations applicable to officials and other servants of the European Communities.
6. In matters concerning the Secretariat staff, the European Data Protection Supervisor shall have the same status as the institutions within the meaning of Article 1 of the Staff Regulations of Officials of the European Communities.

Article 44

Independence

1. The European Data Protection Supervisor shall act in complete independence in the performance of his or her duties.
2. The European Data Protection Supervisor shall, in the performance of his or her duties, neither seek nor take instructions from anybody.
3. The European Data Protection Supervisor shall refrain from any action incompatible with his or her duties and shall not, during his or her term of office, engage in any other occupation, whether gainful or not.

4. The European Data Protection Supervisor shall, after his or her term of office, behave with integrity and discretion as regards the acceptance of appointments and benefits.

Article 45

Professional secrecy

The European Data Protection Supervisor and his or her staff shall, both during and after their term of office, be subject to a duty of professional secrecy with regard to any confidential information which has come to their knowledge in the course of the performance of their official duties.

Article 46

Duties

The European Data Protection Supervisor shall:

- (a) hear and investigate complaints, and inform the data subject of the outcome within a reasonable period;
- (b) conduct inquiries either on his or her own initiative or on the basis of a complaint, and inform the data subjects of the outcome within a reasonable period;
- (c) monitor and ensure the application of the provisions of this Regulation and any other Community act relating to the protection of natural persons with regard to the processing of personal data by a Community institution or body with the exception of the Court of Justice of the European Communities acting in its judicial capacity;
- (d) advise all Community institutions and bodies, either on his or her own initiative or in response to a consultation, on all matters concerning the processing of personal data, in particular before they draw up internal rules relating to the protection of fundamental rights and freedoms with regard to the processing of personal data;
- (e) monitor relevant developments, insofar as they have an impact on the protection of personal data, in particular the development of information and communication technologies;
- (f)
 - (i) cooperate with the national supervisory authorities referred to in Article 28 of Directive 95/46/EC in the countries to which that Directive applies to the extent necessary for the performance of their respective duties, in particular by exchanging all useful information, requesting such authority or body to exercise its powers or responding to a request from such authority or body;
 - (ii) also cooperate with the supervisory data protection bodies established under Title VI of the Treaty on European Union particularly with a view to improving consistency in applying the rules and procedures with which they are respectively responsible for ensuring compliance;
- (g) participate in the activities of the Working Party on the Protection of Individuals with regard to the Processing of Personal Data set up by Article 29 of Directive 95/46/EC;
- (h) determine, give reasons for and make public the exemptions, safeguards, authorisations and conditions mentioned in Article 10(2)(b),(4), (5) and (6), in Article 12(2), in Article 19 and in Article 37(2);
- (i) keep a register of processing operations notified to him or her by virtue of Article 27(2) and registered in accordance with Article 27(5), and provide means of access to the registers kept by the Data Protection Officers under Article 26;
- (j) carry out a prior check of processing notified to him or her;
- (k) establish his or her Rules of Procedure.

*Article 47***Powers**

1. The European Data Protection Supervisor may:
 - (a) give advice to data subjects in the exercise of their rights;
 - (b) refer the matter to the controller in the event of an alleged breach of the provisions governing the processing of personal data, and, where appropriate, make proposals for remedying that breach and for improving the protection of the data subjects;
 - (c) order that requests to exercise certain rights in relation to data be complied with where such requests have been refused in breach of Articles 13 to 19;
 - (d) warn or admonish the controller;
 - (e) order the rectification, blocking, erasure or destruction of all data when they have been processed in breach of the provisions governing the processing of personal data and the notification of such actions to third parties to whom the data have been disclosed;
 - (f) impose a temporary or definitive ban on processing;
 - (g) refer the matter to the Community institution or body concerned and, if necessary, to the European Parliament, the Council and the Commission;
 - (h) refer the matter to the Court of Justice of the European Communities under the conditions provided for in the Treaty;
 - (i) intervene in actions brought before the Court of Justice of the European Communities.
2. The European Data Protection Supervisor shall have the power:
 - (a) to obtain from a controller or Community institution or body access to all personal data and to all information necessary for his or her enquiries;
 - (b) to obtain access to any premises in which a controller or Community institution or body carries on its activities when there are reasonable grounds for presuming that an activity covered by this Regulation is being carried out there.

*Article 48***Activities report**

1. The European Data Protection Supervisor shall submit an annual report on his or her activities to the European Parliament, the Council and the Commission and at the same time make it public.
2. The European Data Protection Supervisor shall forward the activities report to the other Community institutions and bodies, which may submit comments with a view to possible examination of the report in the European Parliament, in particular in relation to the description of the measures taken in response to the remarks made by the European Data Protection Supervisor under Article 31.

CHAPTER VI

FINAL PROVISIONS*Article 49***Sanctions**

Any failure to comply with the obligations pursuant to this Regulation, whether intentionally or through negligence on his or her part, shall make an official or other servant of the European Communities liable to disciplinary action, in accordance with the rules and procedures laid down in the Staff Regulations of Officials of the European Communities or in the conditions of employment applicable to other servants.

*Article 50***Transitional period**

Community institutions and bodies shall ensure that processing operations already under way on the date this Regulation enters into force are brought into conformity with this Regulation within one year of that date.

*Article 51***Entry into force**

This Regulation shall enter into force on the twentieth 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.

Done at Brussels, 18 December 2000.

For the European Parliament

The President

N. FONTAINE

For the Council

The President

D. VOYNET

ANNEX

1. The Data Protection Officer may make recommendations for the practical improvement of data protection to the Community institution or body which appointed him or her and advise it and the controller concerned on matters concerning the application of data protection provisions. Furthermore he or she may, on his or her own initiative or at the request of the Community institution or body which appointed him or her, the controller, the Staff Committee concerned or any individual, investigate matters and occurrences directly relating to his or her tasks and which come to his or her notice, and report back to the person who commissioned the investigation or to the controller.
 2. The Data Protection Officer may be consulted by the Community institution or body which appointed him or her, by the controller concerned, by the Staff Committee concerned and by any individual, without going through the official channels, on any matter concerning the interpretation or application of this Regulation.
 3. No one shall suffer prejudice on account of a matter brought to the attention of the competent Data Protection Officer alleging that a breach of the provisions of this Regulation has taken place.
 4. Every controller concerned shall be required to assist the Data Protection Officer in performing his or her duties and to give information in reply to questions. In performing his or her duties, the Data Protection Officer shall have access at all times to the data forming the subject-matter of processing operations and to all offices, data-processing installations and data carriers.
 5. To the extent required, the Data Protection Officer shall be relieved of other activities. The Data Protection Officer and his or her staff, to whom Article 287 of the Treaty shall apply, shall be required not to divulge information or documents which they obtain in the course of their duties.
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I

(Information)

COUNCIL

DECISION OF THE SECRETARY-GENERAL OF THE COUNCIL/HIGH REPRESENTATIVE FOR
COMMON FOREIGN AND SECURITY POLICY

of 25 June 2001

on a code of good administrative behaviour for the General Secretariat of the Council of the
European Union and its staff in their professional relations with the public

(2001/C 189/01)

THE SECRETARY-GENERAL OF THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 207(2) thereof,

Having regard to the Council's Rules of Procedure, and in particular Article 23 thereof,

Whereas:

- (1) The provisions of Community law on openness and transparency should be fully respected in the daily practice of the General Secretariat of the Council (hereinafter referred to as the 'General Secretariat').
- (2) Experience has shown that a number of requests from citizens for general information fall outside the scope of the rules governing public access to Council documents as laid down in Regulation (EC) No 1049/2001⁽¹⁾ of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.
- (3) Guidance should be provided for members of staff in their professional relations with the public,

HAS DECIDED AS FOLLOWS:

Article 1

A code of good administrative behaviour for the General Secretariat of the Council of the European Union and its staff in their professional relations with the public is hereby adopted. This code is contained in the Annex.

Article 2

1. The objective of this Decision and the annexed code is to facilitate the implementation of rights and obligations flowing from the treaties and acts adopted for their application, without creating additional rights.

2. This Decision shall not prevail over any provision of the Treaty on European Union, the Treaty establishing the European Community, the Staff Regulations of officials and the conditions of employment of the other servants of the European Communities, Regulation (EC) No 1049/2001 of the European Parliament and of the Council or any decision taken by the Council regarding public access to Council documents.

Article 3

The necessary measures shall be taken within the General Secretariat to ensure that this Decision and the annexed code:

- are published in the *Official Journal of the European Communities*, C series, are publicised as widely as possible and made available to the public via the Internet;
- are respected by members of staff.

Article 4

The code of good administrative behaviour annexed to this Decision shall be reviewed two years after the date on which it takes effect, in the light of the experience gained from its implementation.

Article 5

This Decision shall take effect on 25 June 2001.

Done at Brussels, 25 June 2001

The Secretary-General/High Representative

Javier SOLANA

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

ANNEX

Code of good administrative behaviour for the General Secretariat of the Council of the European Union and its staff in their professional relations with the public*Article 1***General provisions**

1. In their professional relations with the public, members of staff, that is to say, officials and other servants of the General Secretariat of the Council covered by the Staff Regulations of officials of the European Communities and the conditions of employment of other servants of the European Communities (hereinafter referred to as 'Staff Regulations'), shall observe the provisions set out in this Code of good administrative behaviour (hereinafter referred to as the 'Code'). Persons employed under private law contracts, experts on secondment from national services and trainees, etc. working for the Council Secretariat should also be guided by it.

2. The relations between the General Secretariat of the Council and its staff are governed exclusively by the Staff Regulations.

*Article 2***Scope of application**

This Code lays down the general principles of good administrative behaviour applicable to members of staff in their professional relations with the public, except where these are governed by specific provisions, such as the rules concerning access to documents and public tendering procedures.

*Article 3***Non-discrimination**

In dealing with requests and answering enquiries, members of staff shall ensure that the principle of equal treatment is observed. Persons in the same situation shall be treated in the same manner, unless specific treatment is justified by the objective characteristics of the matter in question.

*Article 4***Fairness, loyalty and neutrality**

1. Members of staff shall act in a fair and reasonable manner.

2. In their professional relations with the public and in accordance with their obligations (in particular those imposed by Article 11 of the Staff Regulations), members of staff shall in all circumstances act in the interests of the European Union and of the Council and shall not allow themselves to be influenced by personal or national considerations nor by political pressure or express personal legal opinions.

*Article 5***Courtesy**

Members of staff shall act in a conscientious, correct, courteous and approachable manner. In replying to correspondence or telephone calls or in any other professional contact with the public, they shall endeavour to be as helpful as possible.

*Article 6***Provision of information**

1. Members of staff shall provide the public with the information requested, falling within their area of responsibility. They shall ensure that the information is as clear and comprehensible as possible.

2. If, for reasons of confidentiality and/or pursuant to applicable rules (in particular Article 17 of the Staff Regulations), a member of staff considers that he is unable to divulge the information requested, the reasons why such information cannot be provided shall be given to the person concerned.

3. When access to a Council document is requested, the specific provisions regarding public access to documents shall apply.

Article 7

Replying to letters in the language used by the members of the public

In accordance with Article 21 of the Treaty establishing the European Community, the General Secretariat of the Council shall reply to letters in the language of the initial letter, provided that it was written in one of the official languages of the Community.

Article 8

Telephone calls

1. When answering the telephone, members of staff shall identify themselves and their service. They shall also establish the identity of the caller. Unless reasons of confidentiality, as referred to in Article 6(2), prevent it, they shall provide the requested information or direct the caller to the appropriate source. However, in cases of hesitation as to whether that information may be provided, they shall consult their hierarchy or refer callers to their superior.
2. Should an oral request for information be imprecise or complex, the member of staff approached may ask the person concerned to formulate the request in writing.

Article 9

Written replies and their deadlines

1. Members of staff shall without delay, and normally within 15 working days following receipt, reply to all requests for information addressed to the General Secretariat.
2. Where a reasoned reply cannot be provided within the period referred to in paragraph 1, the member of staff responsible shall inform the correspondent thereof without delay. In this event, the correspondent shall be given a definitive reply as soon as possible.
3. The service and the name of the member of staff in charge of the matter shall be indicated in the reply.
4. No reply need be provided where:
 - an excessive number of identical letters or requests has been received;
 - a reply has already been given to the same request from the same person;
 - the request is of an improper nature.
5. Should a request in writing fall outside the area of responsibility of the member of staff receiving it, the request shall be forwarded to the competent Service of the General Secretariat without delay for handling by that service.
6. If the request is imprecise or complex, the member of staff may ask the correspondent to clarify the request.
7. If the member of staff considers that a request should have been addressed to another institution, another body, another organisation or a national administration, the member of the public shall be informed of this, and the request shall immediately be forwarded to the institution, body or administration concerned.

Article 10

Requests from the media

The Press Service is responsible for contacts with the media. However, when requests for information from the media concern technical subjects falling within their specific areas of responsibility, members of the staff may answer them.

*Article 11***Data protection**

1. Members of staff handling an individual's personal data shall observe the provisions set out in Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽¹⁾.
 2. In accordance with that Regulation, members of staff shall refrain from processing personal data for non-legitimate purposes or transmitting such data to unauthorised third parties.
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⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

TRANSPARENCY – HISTORICAL OVERVIEW (1992 -2010)

Year	Date	Key events	Legal instruments of the Community institutions and bodies	Judgments of the Court of Justice and of the Court of First Instance
1992	7 February	Declaration No 17 annexed to the Final Act of the Treaty on European Union ¹		
	16 October	Birmingham Declaration ²		
	12 December	Conclusions of the Edinburgh European Council on transparency ³		
1993	8 June	Commission communication: public access to documents of the institutions – Communication to the Council, the European Parliament and the Economic and Social Committee ⁴		
	8 June	Council Resolution on the quality of drafting of Community legislation ⁵		
	21-22 June	Conclusions of the Copenhagen European Council on access to information ⁶		

¹ Selected instruments taken from the Treaties, Book I, volume 1, p. 639.

² Bulletin of the European Communities, No 10-1992, p. 9.

³ Bulletin of the European Communities, No 12-1992, pp. 19-21.

⁴ OJ C 156, 8.6.1993, p. 5.

⁵ OJ C 166, 17.6.1993, p. 1.

⁶ SN 180/1/93.

Year	Date	Key events	Legal instruments of the Community institutions and bodies	Judgments of the Court of Justice and of the Court of First Instance
1993	25 October	Interinstitutional Agreement between the European Parliament, the Council and the Commission on transparency, democracy and subsidiarity ⁷		
	6 December		Council Decision 93/662/EC adopting the Council's Rules of Procedure ⁸	
	6 December		93/731/EC: code of conduct concerning public access to Council and Commission documents ⁹	
	20 December		Council Decision 93/731/EC on public access to Council documents¹⁰	
1994	8 February		Decision 94/90/ECSC, EC, Euratom on public access to Commission documents¹¹	
1995	4 March	Publication in the Official Journal of the Commission communication on improved access to documents ¹²		

⁷ Bulletin of the European Communities, No 10-1993, pp. 128-129.

⁸ OJ L 304, 10.12.1993, p. 1.

⁹ OJ L 340, 31.12.1993, p. 42.

¹⁰ OJ L 340, 31.12.1993, p. 43. Decision *repealed* by Council Decision 2001/840/EC of 29.11.2001 (see note 68 below).

¹¹ OJ L 46, 18.2.1994, p. 58, Decision *replaced* by Regulation (EC) No 1049/2001 of 30 May 2001 (see note 62 below).

¹² OJ C 67, 4. 3.1994, p. 5.

Year	Date	Key events	Legal instruments of the Community institutions and bodies	Judgments of the Court of Justice and of the Court of First Instance
1995	29 May 2 October	Council conclusions on transparency ¹³ Code of Conduct on public access to the minutes and statements in the minutes of the Council acting as legislator ¹⁴		Judgment in case T-194/94: John Carvel & Guardian Newspaper v. Council ¹⁵
1996	27 February 30 April		Decision of the Secretary-General of the Council relating to fees in the context of public access to Council documents ¹⁶	Judgment of the Court of Justice in case C-58/94: Netherlands v. Council ¹⁷
	July	Initial report on the implementation of Council Decision 93/731/EC on public access to Council documents ¹⁸		

¹³ 7481/95, pp. 4-5.
¹⁴ 10204/95, pp. 15-18.
¹⁵ ECR [1995] II-2765.
¹⁶ OJ C 74, 14.3.1996, p. 3.
¹⁷ ECR [1996] I-2169.
¹⁸ 8330/96.

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Year	Date	Key events	Legal instruments of the Community institutions and bodies	Judgments of the Court of Justice and of the Court of First Instance
1996	19 September		96/567/EC, ECSC, Euratom: Commission Decision of 19 September 1996 amending Decision 94/90/ECSC, EEC, Euratom on public access to Commission documents ¹⁹	
	6 December	Council conclusions on the review of Council Decision 93/731/EC on public access to Council documents ²⁰		
	6 December		96/705/Euratom/ECSC/EC: Council Decision amending Council Decision 93/731/CE on public access to Council documents ²¹	
1997	5 March			Judgment in case T-105/95: WWF v. Commission ²²
	21 March		Decision on public access to documents of the European Environment Agency	
	26 March		Rules on public access to documents adopted by the Management Committee of the European Investment Bank ²³	
	7 April		Decision No 18/97 laying down internal rules for the treatment of applications for access to documents held by the Court ²⁴	

¹⁹ OJ L 247, 28.9.1996, p. 45.

²⁰ 11974/96 COR I REV I.

²¹ OJ L 325, 14.12.1996, p. 19.

²² ECR [1997] II-313.

²³ OJ C 243, 9.8.1997, p. 13; Decision was *repealed* and *replaced* by the rules adopted by the Governing Board of the Bank on 27 November 2002; see note 75 below.

²⁴ OJ C 295, 23.9.1998, p. 1; Decision was *repealed* by Decision No 12/2005 of the Court of Auditors of 10 March 2005 (see note 94 below).

Year	Date	Key events	Legal instruments of the Community institutions and bodies	Judgments of the Court of Justice and of the Court of First Instance
1997	25 May		Decision of the Economic and Social Committee on public access to ESC documents ²⁵	
	3 June		Decision No 9/97 concerning public access to administrative documents of the European Monetary Institute ²⁶	
	10 July		97/632/EC, ECSC, Euratom: Decision of the European Parliament of 10 July on public access to documents of the European Parliament ²⁷	
	17 September		Decision of the Committee of the Regions on public access to documents of the Committee of the Regions ²⁸	
	27 October		Decision of the Governing Board on public access to European Training Foundation documents ²⁹	
	15 December	Special report by the European Ombudsman to the European Parliament following his own-initiative inquiry into public access to documents ³⁰		

²⁵

OJ L 339, 10.12.1997, p. 18; this Decision was *repealed* by the Decision of the Economic and Social Committee of 1 July 2003; see note 82 below.

²⁶

OJ L 90, 25.3.1998, p. 43.

²⁷

OJ L 263, 25.9.1997, p. 27; Decision *replaced* by Regulation (EC) No 1049/2001 of 30 May 2001 (see note 62 below).

²⁸

OJ L 351, 23.12.1997, p. 70; this Decision was *repealed* by Decision No 64/2003 of 11 February 2003; see note 76 below.

²⁹

OJ C 369, 6.12.1997, p. 10.

³⁰

OJ C 44, 10.2.1998, p. 9.

Year	Date	Key events	Legal instruments of the Community institutions and bodies	Judgments of the Court of Justice and of the Court of First Instance
1998	6 February			Judgment of the CFI in case T-124/96: Interporc v. Commission ³¹
	3 March			Order by the CFI in Case T610/97 R: Norup Carlsen and others v. Council ³²
	19 March			Judgment in case T-83/96: Gerard van der Wal v. Commission ³³
	19 March		Council Decision on establishing a public register of Council documents ³⁴	
	19 March	Presidency's conclusions on the transparency of Council activities in the field covered by Title VI of the EU Treaty ³⁵		
	16 June	Conclusions of the Cardiff European Council on transparency ³⁶		
	17 June			Judgment in case T-174/95: Svenska Journalistförbundet v. Council ³⁷
	19 June	Second report on the implementation of Council Decision 93/731/EC on public access to Council documents ³⁸		

³¹ ECR [1998] II-231.

³² ECR [1998] II-485.

³³ ECR [1998] II-545.

³⁴ 6423/1/98 REV 1.

³⁵ 6067/98.

³⁶ SN 150/1/98 REV 1.

³⁷ ECR [1998] II-2289.

³⁸ 6715/2/98 REV 2 COR 1.

Year **Date** **Key events** **Legal instruments of the Community institutions and bodies** **Judgments of the Court of Justice and of the Court of First Instance**

1998 29 June Council conclusions on the second review of Council Decision 93/731/EC on public access to Council documents³⁹
 Council conclusions on transparency⁴⁰
 29 June Resolution on the special report by the European Ombudsman to the European Parliament following his own-initiative inquiry into public access to documents⁴¹
 16 July

3 November

ECB/1998/12: Decision of the European Central Bank of 3 November 1998 concerning public access to documentation and the archives of the European Central Bank⁴²
 1999/738/EC: The European Foundation for the Improvement of Living and Working Conditions Decision of 21 November 1997 on code of conduct concerning public access to documents of the European Foundation for the Improvement of Living and Working Conditions⁴³

21 November

³⁹ 9191/98, Annex I.

⁴⁰ 9191/98 - Annex II.

⁴¹ OJ C 292, 21.12.1998, p. 170.

⁴² OJ L 110, 28.4.1999, p. 30 (replaces Decision No 9/97 of the EMI mentioned in note 26); this Decision was *repealed* by Decision ECB/2004/3 of the European Central Bank (see note 90 below).

⁴³ OJ L 296, 17.11.1999, p. 25.



Year	Date	Key events	Legal instruments of the Community institutions and bodies	Judgments of the Court of Justice and of the Court of First Instance
1998	6 December	Council conclusions on Openness and Cooperation in the field of information activities about the European Union ⁴⁴		
	22 December	Interinstitutional Agreement on common guidelines for the quality of drafting of Community legislation ⁴⁵		
1999	1 January	Entry into service of the public register of Council documents		
	1 May	Entry into force of the Treaty of Amsterdam ⁴⁶		
	31 May		1999/385/EC, ECSC, Euratom: Council Decision adopting the Council's Rules of Procedure ⁴⁷	
	8 June	Council conclusions on transparency and EU information activities ⁴⁸		
	19 July			Judgment in case T-188/97: Rothmans International v. Commission ⁴⁹
	19 July			Judgment in case T-14/98: Heidi Hautala v. Council ⁵⁰
	19 July	Report on the operation of the public register of Council documents ⁵¹		

⁴⁴ 13314/1/98 REV 1.

⁴⁵ OJ C 73, 17.3.1999, p. 1.

⁴⁶ Provisions applicable as regards the right of public access to documents: Article 255 of the EC Treaty, Articles 28(1) and 41(1) of the EU Treaty, Declarations 35 and 41 annexed to the Final Act of the Amsterdam Treaty and Articles 230 and 195 of the EC Treaty (possibility of court proceedings or complaints to the Ombudsman in the event of total or partial rejection of a confirmatory application for access) and Article 207(3) of the EC Treaty (establishment in the Council's Rules of Procedure of the conditions under which public access is granted to Council documents).

⁴⁷ OJ L 147, 12.6.1999, p. 13.

⁴⁸ 9064/99.

⁴⁹ ECR [1999] II-2463.

⁵⁰ ECR [1999] II-2489.

⁵¹ 9862/99.

Year	Date	Key events	Legal instruments of the Community institutions and bodies	Judgments of the Court of Justice and of the Court of First Instance
1999	14 October			Judgment in case T-309/97: Bavarian Lager Company v. Commission ⁵²
	6 December		2000/23/EC: Council Decision on the improvement of information on the Council's legislative activities and the public register of Council documents ⁵³	Judgment in case T-92/98: Interporc v. Commission ⁵⁴
	7 December			Judgment of the Court of Justice in cases C-174/98 P & C-189/98 P: Gerard van der Wal and Netherlands v. Commission ⁵⁵
2000	11 January			Judgment in case T-188/98: Aldo Kuijter v. Council ⁵⁶
	6 April			Judgment in case T-20/99: Denkavit Nederland BV v. Commission ⁵⁷
	13 September			

⁵²

ECR [1999] II-3217.

⁵³

OJ L 9, 13.1.2000, p. 22. Decision *repealed* by Decision 2001/840/EC of the Council of 29 November 2001 (see note 68 below).

⁵⁴

ECR [1999] II-3521.

⁵⁵

ECR [2000] I-1.

⁵⁶

ECR [2000] II-1959.

⁵⁷

ECR [2000] II-3011.

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Year	Date	Key events	Legal instruments of the Community institutions and bodies	Judgments of the Court of Justice and of the Court of First Instance
2000	20 October			Judgment of the CFI in case T-123/99, JT's Corporation ⁵⁸
	7 December	Solemn declaration of the EU Charter of Fundamental Rights ⁵⁹		Order of the CFI in case T-3/00 Pistorias v. Council and ECB ⁶⁰
2001	14 February			
	9 April		2001/320/EC: Council Decision of 9 April 2001 on making certain categories of Council documents available to the public ⁶¹	
	30 May		Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁶²	
	30 May	Joint declaration relating to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁶³		
	12 July			Judgment in case T-204/99: Olli Mattila v. Council ⁶⁴
	10 October			Judgment of the CFI in case T-111: BAT v. Commission ⁶⁵

⁵⁸ ECR [2000] II-3269.

⁵⁹ Article 42 of the Charter provides that: "Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents."

⁶⁰ ECR [2001] II-717.

⁶¹ OJ L 111, 20.4.2001, p. 29. Decision repealed by Decision 2001/840/EC of the Council of 29 November 2001 (see note 68 below).

⁶² OJ L 145, 31.5.2001, p. 43. Regulation 1049/2001 applied from 3 December 2001, *replacing* with effect from that date the three institutions' existing rules on access, i.e. Council Decision 93/731, Commission Decision 94/90 and European Parliament Decision 97/632.

⁶³ OJ L 173, 27.6.2001, p. 5.

⁶⁴ ECR [2001] II-2265.

⁶⁵ ECR [2001] II-2997.

Year	Date	Key events	Legal instruments of the Community institutions and bodies	Judgments of the Court of Justice and of the Court of First Instance
2001	13 November		European Parliament decision adapting its Rules of Procedure to the provisions of European Parliament and Council Regulation (EC) No 1049/2001 on public access to Parliament, Council and Commission documents ⁶⁶ Bureau Decision on public access to European Parliament documents ⁶⁷ 2001/840/EC: Council Decision of 29 November 2001 amending the Council's Rules of Procedure ⁶⁸ 2001/937/EC, ECSC, Euratom: Commission Decision of 5 December 2001 amending its rules of procedure ⁶⁹	Judgment of the Court of Justice in case C-353/99 P: Heidi Hautala v. Council ⁷⁰ Judgment in case T-191/99: David Petrie and others v. Commission ⁷¹ Judgment of the CFI in case T-211/00: Aldo Kujijer v. Council ⁷²
	28 November			
	29 November			
	5 December			
	6 December			
	11 December			
2002	7 February			

⁶⁶ OJ C 140 E, 13.6.2002, p. 120.

⁶⁷ OJ C 374, 29.11.2001, p. 1.

⁶⁸ OJ L 313, 30.11.2001, p. 40, repealing Decisions 93/731/EC, 2000/23/EC and 2001/320/EC.

⁶⁹ OJ L 345, 29.12.2001, p. 94.

⁷⁰ ECR [2001] I-9565.

⁷¹ ECR [2001] II-3677.

⁷² ECR [2001] II-485.

Year	Date	Key events	Legal instruments of the Community institutions and bodies	Judgments of the Court of Justice and of the Court of First Instance
2002	3 June	Entry into service of public registers of Commission and Parliament documents		
	25 June			Judgment of the CFI in case T-311/00: BAT v. Commission ⁷³
	22 July		2002/682/EC, Euratom: Council Decision adopting the Council's Rules of Procedure ⁷⁴	
	27 November		Rules on public access to documents adopted by the Management Committee of the European Investment Bank ⁷⁵	
2003	11 February		Committee of the Regions Decision No 64/2003 of 11 February 2003 on public access to Committee of the Regions documents ⁷⁶	
	6 March			Judgment of the Court of Justice in case C-41/00 P: Interporc v. Commission ⁷⁷
	8 April	Report of the Council on the implementation of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (2002) ⁷⁸		

⁷³ ECR [2002] II-2781.

⁷⁴ OJ L 230, 28.8.2002, p. 7.

⁷⁵ OJ C 292, 27.11.2002, p. 10. These rules *repealed* and *replaced* the Decision adopted by the Management Committee on 26 March 1997. See also note 23.

⁷⁶ OJ L 160, 28.6.2003, p. 96. This Decision *repealed* the Decision mentioned in note 28.

⁷⁷ Not yet published in the ECR.

⁷⁸ 7957/03.

Year	Date	Key events	Legal instruments of the Community institutions and bodies	Judgments of the Court of Justice and of the Court of First Instance
2003	29 April	Report from the Commission on the application in 2002 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents ⁷⁹		
	15 May			Judgment of the Court of Justice in case C-193/01P, Pitsiorlas v. Council and ECB ⁸⁰
	18 June	Adoption of Council Regulations Nos 1645/2003 to 1655/2003 extending the scope of Regulation (EC) No 1049/2001 to 11 Community agencies and bodies ⁸¹		
	1 July		2003/603/EC: Decision of the European Economic and Social Committee of 1 July 2003 on public access to European Economic and Social Committee documents ⁸²	
	22 July	Adoption of Regulations Nos 1641/2003 to 1644/2003 of the European Parliament and of the Council extending the scope of Regulation (EC) No 1049/2001 to four Community agencies and bodies ⁸³		
	17 September			Judgment of the CFI in case T-76/02: Mara Messina v. Commission ⁸⁴

⁷⁹

COM(2003) 216.

⁸⁰ ECR [2003] I-4837.

⁸¹ OJ L 245, 29.9.2003, p. 13 to 43.

⁸² OJ L 205, 14.8.2003, p. 19. This Decision *repealed* the Decision mentioned in note 25.

⁸³ OJ L 245, 29.9.2003, pp. 1-12.

⁸⁴ ECR [2003] II-3203.

Year	Date	Key events	Legal instruments of the Community institutions and bodies	Judgments of the Court of Justice and of the Court of First Instance
2003	22 September		Council Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 amending Regulation (EEC, Euratom) No 354/83 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community ⁸⁵	
	25 September	European Parliament resolution on public access to Parliament, Council and Commission documents (implementation of Regulation 1049/2001/EC) ⁸⁶		
	16 October			
2004	22 January			Judgment of the CFI in case T-47/01: Co-Frutta v. Commission ⁸⁷
	30 January	Report from the Commission on the implementation of the principles in Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents ⁸⁹		Judgment of the Court of Justice in case C-353/01 P: Mattila v. Council and Commission ⁸⁸

⁸⁵ OJ L 243, 27.9.2003, p. 1.

⁸⁶ A5-0298/2003.

⁸⁷ ECR [2003] II-4441.

⁸⁸ ECR [2004] I-1073.

⁸⁹ COM (2004) 45 final.

Year	Date	Key events	Legal instruments of the Community institutions and bodies	Judgments of the Court of Justice and of the Court of First Instance
2004	4 March		ECB/2004/3: Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents ⁹⁰	
	22 March		2004/338/EC, Euratom: Council Decision of 22 March adopting the Council's Rules of Procedure ⁹¹	
	23 November			Judgment of the CFI in case T-84/03: Turco v. Council ⁹²
	30 November			Judgment of the CFI in case T-168/02: IFAW Internationaler Tierschutz-Fonds v. Commission ⁹³
2005	10 March		Decision No 12/2005 of the Court of Auditors of the European Communities of 10 March 2005 regarding public access to Court documents ⁹⁴	
	17 March			Judgment of the CFI in case T-187/03: Scippaccola v. Commission ⁹⁵
	13 April			Judgment of the CFI in case T-2/03: Verein für Konsumenteninformation v. Commission ⁹⁶

⁹⁰ OJ L 80, 18.3.2004, p. 42.

⁹¹ OJ L 106, 15.4.2004, p. 22.

⁹² ECR [2004] II-4061.

⁹³ ECR [2004] II-4135.

⁹⁴ OJ C 67, 20.3.2009, p. 1.

⁹⁵ ECR [2005] II-1029.

⁹⁶ ECR [2005] II-1121.

Year	Date	Key events	Legal instruments of the Community institutions and bodies	Judgments of the Court of Justice and of the Court of First Instance
2005	26 April			Judgment of the CFI in joined cases T110/03, T-150/03 and T-405/03: J.M. Sisón v. Council ⁹⁷
2006	21 December	Adoption of Council conclusions on improving openness and transparency in the Council ⁹⁸		
	4 April	Adoption of European Parliament Resolution with recommendations to the Commission on access to the institutions' texts ⁹⁹		
	15 and 16 June	Adoption by the European Council of an overall policy on transparency ¹⁰⁰		
	26 June		Decision No 1/2006 of the Joint Supervisory Board of Europol of 26 June 2006 amending its rules of procedure ¹⁰¹	
	6 July			Judgment of the CFI in joined cases T391/03 and T-70/04: Franchet & Byk v. Commission ¹⁰²

⁹⁷ ECR [2005] II-1429.

⁹⁸ 15834/05 and 15834/05 ADD 1.

⁹⁹ A6-0052/2006.

¹⁰⁰ 10633/1/06 REV 1, pp. 23 and 24.

¹⁰¹ OJ C 311, 19.12.2006, p. 13.

¹⁰² ECR [2006] II-2023.

Year	Date	Key events	Legal instruments of the Community institutions and bodies	Judgments of the Court of Justice and of the Court of First Instance
2006	6 September		Regulation (CE) No 1367/2006 on the application of the provisions of the Århus Convention on Access to Information in Environmental Matters ¹⁰³	
	15 September		2006/683/EC, Euratom: Council Decision of 15 September adopting the Council's Rules of Procedure ¹⁰⁴	
	21 September		Frontex - Decision of the Management Board of 21 September 2006 ¹⁰⁵	
	14 December			Judgment of the CFI in case T-237/02: Technische Glaswerke v. Commission ¹⁰⁶
2007	1 February			Judgment of the Court of Justice in case C-266/05 P: J.M. Sison v. Council ¹⁰⁷
	18 April	Commission Green Paper: Public Access to Documents held by institutions of the European Community – A review ¹⁰⁸		
	25 April			Judgment of the CFI in case T-264/04: WWF European Policy Programme v. Council ¹⁰⁹

¹⁰³ OJ L 264, 25.9.2006, p. 13.

¹⁰⁴ OJ L 285, 16.10.2006, pp. 63 and 64.

¹⁰⁵ Not yet published in the OJ (see http://www.frontex.europa.eu/minutes_and_decisions/decisions/page6.html).

¹⁰⁶ ECR [2006] II-5131.

¹⁰⁷ ECR [2007] I-1233.

¹⁰⁸ COM(2007) 185 final.

¹⁰⁹ ECR [2007] II-911.

Year	Date	Key events	Legal instruments of the Community institutions and bodies	Judgments of the Court of Justice and of the Court of First Instance
2007	12 September			Judgment of the CFI in case T-36/04: API v. Commission ¹¹⁰
	8 November			Judgment of the CFI in case T-194/04: Bavarian Lager Company v. Commission ¹¹¹
	27 November			Judgment of the CFI in joined cases T-3/03 and T-337/04: Ptsiorilas v. Council and ECB ¹¹²
	18 December			Judgment of the Court of Justice in case C-64/05 P: Sweden v. Commission ¹¹³
2008	16 January	Commission Staff Working Document: Report on the Outcome of the Public Consultation on the Review of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents ¹¹⁴		
	30 January			Judgment of the CFI in case T-380/04: Terezakis v. Commission ¹¹⁵

¹¹⁰ ECR [2007] II-3201.

¹¹¹ ECR [2007] II-4523.

¹¹² ECR [2007] II-4779.

¹¹³ ECR [2007] I-11389.

¹¹⁴ SEC (2008) 29/2, 16.2.2008

¹¹⁵ ECR [2008] II-11.

Year	Date	Key events	Legal instruments of the Community institutions and bodies	Judgments of the Court of Justice and of the Court of First Instance
2008	30 April	Adoption by the Commission of a proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents ¹¹⁶		Judgment of the CFI in case T-141/05: <i>Internationaler Hilfsfond v. Commission</i> ¹¹⁷ Judgment of the Court in joined cases C-39/05 P and C-52/05 P: <i>Sweden v. Council and others and Maurizio Turco v. Council</i> ¹¹⁸ Judgment of the CFI in case T-403/05: <i>My Travel Group v. Commission</i> ¹¹⁹ Judgment of the CFI in case T-42/05: <i>Rhiannon Williams v. Commission</i> ¹²⁰
	5 June			
	1 July			
	9 September			
	10 September			

¹¹⁶

COM(2008) 229 final.

¹¹⁷

ECR [2008] II-0084.

¹¹⁸

ECR [2008] I-4723.

¹¹⁹

ECR [2008] II-1967.

¹²⁰

ECR [2008] II-0156.

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Year	Date	Key events	Legal instruments of the Community institutions and bodies	Judgments of the Court of Justice and of the Court of First Instance
2009	1 December	Entry into force of the Treaty of Lisbon ¹²¹	European Council Decision 2009/882/EU of 1 December 2009 adopting its Rules of Procedure ¹²²	
	1 December		Council Decision 2009/937/EC of 1 December 2009 adopting the Council's Rules of Procedure ¹²³	
	26 January			Judgment of the Court of Justice in case C-362/08 P: Internationaler Hilfsfond v. Commission ¹²⁴
2010	29 June			Judgement of the Court of Justice in case C-28/08 P: Commission v. Bavarian Lager ¹²⁵
	29 June			Judgement of the Court of Justice in case C-139/07 P: Commission v. Technische Glaswerke Ilmenau ¹²⁶

¹²¹ OJ C 83, 30.3.2010, p. 1.

¹²² OJ L 315, 2.12.2009, p. 52.

¹²³ OJ L 325, 11.12.2009, p. 35.

¹²⁴ Not yet in the ECR.

¹²⁵ Not yet in the ECR.

¹²⁶ Not yet in the ECR.

Register: Introductory page

The Register is in the form of a database that can be consulted in «simple search» or «advanced search» modes (see register screen shots below).

The screenshot shows the 'Access to Council documents: Public Register' page on the Council of the European Union website. The page includes the Council logo, a search bar, and a navigation menu. The main content area contains a description of the public register and a list of links for further information.

COUNCIL OF THE EUROPEAN UNION

English (en)

Home Council Policies Documents Treaty of Lisbon Contacts Press

Access to Council documents: Public Register

Access to Council documents: Public Register Legislative Transparency
Policy regarding access to Council documents Archives

Homepage » Documents » Access to Council documents: Public Register

Access to Council documents: Public Register

The public register of Council documents, which has been operational since 1 January 1999, contains references to the Council documents entered in it via an automatic archiving system. Accordingly, all non-sensitive documents submitted to the Council or to one of its preparatory bodies which are to serve as a basis for deliberations, could influence the decision-making process or reflect the progress made on a given subject are automatically listed in the register.

This section contains information on [how to search in the register](#) as well as a number of entries enabling the users to [search in the register](#), [submit a request for access to Council documents](#), demand [technical help on line](#) and to [access the public registers of other EU Institutions and bodies](#).

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- Technical help on line
- Access to the public register of the other institutions and bodies

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Register: Simple search



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Access to Council documents: Public Register Legislative Transparency
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Public Documents only

Words in Title

Text

search only possible in public documents

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Register: Advanced search



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Document Language

Rows per Page

Information included in the Register

“ST” documents without “LIMITE” code or classification

(full text accessible)

The screenshot displays the Council of the European Union website's advanced search interface. The header includes the Council logo, the text 'COUNCIL OF THE EUROPEAN UNION', and a language selector set to 'English (en)'. A navigation menu contains links for Home, Council, Policies, Documents, Treaty of Lisbon, Contacts, and Press. The main content area is titled 'Advanced search' and includes links for 'Access to Council documents: Public Register', 'Legislative Transparency', and 'Policy regarding access to Council documents'. A breadcrumb trail shows the path: Homepage » Documents » Access to Council documents: Public Register » Search in the Register » Advanced search.

The 'Document Information' section for document 5665/05 is as follows:

- Document Number:** 5665/05
- Title:** Discharge to be given to the Commission in respect of the implementation of the budget for the financial year 2003.
- Content:** PDF
- Interinstitutional File:**
- Subject Matter:** FIN 31, PEL 5
- Document Category:** NOTE
- Originator:** Budget Committee
- Addressee:** Permanent Representatives Committee/Council
- Document Date:** 16-02-2005
- Date of Meeting:**
- Archive Date:** 18-02-2005
- Document Language:** EN

A note states: 'Please note that any references contained in the register are not legally binding. Only legal acts published in the Official Journal are binding.' A sidebar on the right offers search options: Search in the Register, Simple search, Advanced search (selected), Latest document references, Latest public documents (full text), How to search in the register, Submit a request for access to Council documents, Technical help on line, and Access to the public register of the other institutions and bodies. A footer note mentions a free PDF viewer from Adobe Systems.

The footer contains navigation links for Council, Policies, Documents, Treaty of Lisbon, Contacts, and Press, each with a brief description of the link's content.

There are specific references in the register for “ST” documents bearing the code “LIMITE” but the full text is not accessible.

“ST” documents with “LIMITE” code (full text not accessible)

The screenshot displays the Council of the European Union website's advanced search interface. At the top, the Council logo and name are visible, along with a language selector set to English (en). The main navigation bar includes links for Home, Council, Policies, Documents, Treaty of Lisbon, Contacts, and Press. The search results page shows a single document entry with the following details:

- Document Number:** 6583/09
- Title:** Proposal for a Directive of the European Parliament and of the Council establishing a framework for the protection of soil - Presidency proposal
- Content (I):** N/A
- Interinstitutional File:** 2006/0086(COD)
- Subject Matter:** ENV 114, AGRI 61, DEVGEN 41, FORETS 16, FSTR 26, RECH 49, REGIO 4, TRANS 69, CODEC 192
- Document Category:** NOTE
- Originator:** General Secretariat
- Addressee:** Delegations
- Document Date:** 20-02-2009
- Date of Meeting:** (None listed)
- Archive Date:** 23-02-2009
- Document Language:** EN

A sidebar on the right offers search options: Search in the Register, Simple search, Advanced search (selected), Latest document references, Latest public documents (full text), How to search in the register, Submit a request for access to Council documents, Technical help on line, and Access to the public register of the other institutions and bodies. A footer menu provides quick links to various sections: Council, Policies, Documents, Treaty of Lisbon, Contacts, and Press.

General Secretariat of the Council

Guide

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Council of the European Union
General Secretariat

Brussels, 30 November 2020
(OR. en)

DE 51/20

LEGAL ACTS

Subject: **DECISION No 51/2020 OF THE SECRETARY-GENERAL OF THE COUNCIL establishing a policy on document and file management in the General Secretariat of the Council**

DECISION No 51/2020
OF THE SECRETARY-GENERAL OF THE COUNCIL
establishing a policy on document and file management
in the General Secretariat of the Council

THE SECRETARY-GENERAL OF THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Rules of Procedure of the European Council, and in particular Article 13 thereof,

Having regard to the Rules of Procedure of the Council, and in particular Article 23 thereof,

WHEREAS:

- (1) Activities carried out by the European Council, the Council, their preparatory bodies and other entities which the General Secretariat of the Council (GSC) assists or for which it provides the secretariat, as well as by the GSC itself, lead to the production of documents.
- (2) The GSC is responsible for ensuring that those documents, and the files within which they are organised, are managed in accordance with principles of good administration. The policy on document and file management in the GSC (the "DFM policy") should be guided by the principles of quality, sharing, efficiency, compliance and security set out in the Charter on establishing guiding principles on information management¹.

¹ CP 27/20

- (3) Consistent document and file management ensures that the GSC is at any time able to provide information on the matters for which it is accountable. It facilitates compliance with legal obligations, supports efficiency and facilitates staff mobility and business continuity by making documents and the files in which they are organised available to and easily identifiable and retrievable by GSC services, as well as by establishing a direct link between past and ongoing GSC activities.
- (4) Documents and files kept by GSC services should preserve institutional memory and comply with legal obligations of the European Council, the Council and the GSC. Setting a clear policy on management and handling of documents in the GSC and the files in which they are organised would therefore enhance traceability which is essential for making documents available in the light of the principle of openness and transparency enshrined in Article 10 TEU and Article 15 TFEU.
- (5) The DFM policy should set out which documents and files are to be kept and which documents, files, or parts thereof may be disposed of at the end of their retention period, in line with their administrative, legal or historical value and legal obligations.
- (6) To simplify the management and handling of documents and files in the GSC, a filing plan and retention schedules are necessary.
- (7) Where possible, documents should be produced, handled and stored in electronic form.
- (8) A common single repository for electronic documents based on common rules and procedures should be introduced for general use in the GSC.
- (9) The digitisation of processes, including the exchange of documents, within the GSC and with entities outside the GSC has led to an increasing number of electronic documents, comprising both digitised documents and documents drawn up in electronic form. The DFM policy should therefore include provisions that facilitate the use and storage of electronic documents in the GSC, guaranteeing integrity and availability of such documents.

- (10) Implementing rules that give all staff guidance on the procedures should be created. To efficiently implement the DFM policy, the availability of required digital solutions should be taken into account.

HAS DECIDED AS FOLLOWS:

TITLE I

GENERAL PROVISIONS

Article 1

Purpose and scope

1. The DFM policy sets out the rules under which the GSC manages and handles documents of the European Council, the Council and its preparatory bodies, and other entities which the GSC assists or for which it provides the secretariat, as well as documents and files related to the internal organisation and functioning of the GSC.
2. The DFM policy establishes rules to be applied by GSC staff when managing and handling documents and files and defines roles and responsibilities in that regard. It determines conditions of validity of electronic documents, electronic procedures and electronic means of transmission which are intended to ensure integrity and availability of documents and metadata over time.
3. The DFM policy shall apply to all stages of the lifecycle of documents and files including, in the case of documents, registration and filing and, in the case of files, opening, closing, retention and preservation or disposal.
4. The DFM policy does not define minimum standards for protecting information nor for the security of documents and files held by the GSC, which shall be governed by a decision of the Secretary-General establishing a policy on information security in the GSC.

5. The DFM policy is without prejudice to obligations arising notably from the Regulation on public access to documents¹, the Regulation on the protection of personal data², the EU financial regulation³, the Archives Regulation⁴, and the Council's Security Rules for protecting EU classified information⁵.

Article 2

Definitions

1. For the purposes of the DFM policy:
- (a) "*availability of a document*" means that a document can be located, retrieved, presented and read or otherwise understood;
 - (b) "*appraisal*" means the process of separating documents that are to be permanently preserved from those that are to be destroyed;
 - (c) "*closure of a file*" means marking a file in a way so that its content and metadata cannot be altered until the appraisal;

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

² Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

³ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

⁴ Council Regulation (EEC, Euratom) No 354/83 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p.1) as amended by Council Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 amending Regulation (EEC, Euratom) No 354/83 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (O J L 243 , 27.09.2003, p. 1) and Council Regulation (EU) 2015/496 of 17 March 2015 amending Regulation (EEC, Euratom) No 354/83 as regards the deposit of the historical archives of the institutions at the European University Institute in Florence (OJ L 79, 25.3.2015, p. 1).

⁵ Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274, 15.10.2013, p. 1).

- (d) *"digitised document"* means an electronic document which is the result of digitisation of content initially stored on physical media (paper, microform, film, analogue audio or audio-visual tapes);
- (e) *"document"* means any content, in whatever medium, which is drawn up or received by the GSC and is in its possession, and concerns a matter relating to the activities, policies and decisions falling within the sphere of responsibility of the institutions and other entities the GSC assists or relating to its official tasks;
- (f) *"drawn up by the GSC"* means that a document contains substantive information, is not of a personal nature, is not short-lived and is approved as ready for transmission by its author (i.e. it is validated by the person who is vested with the authority to adopt it or to take responsibility for it);
- (g) *"received by the GSC"* means that a document contains substantive information, is not of a personal nature, is not short-lived and is intentionally delivered to the GSC by its sender;
- (h) *"electronic document"* means digitised documents and documents drawn up in electronic form;
- (i) *"file"* means the structure around which documents are organised in line with the institution's activities, to form a coherent logical unit together with any associated metadata;
- (j) *"filing plan"* means a hierarchical and logical structure – in the form of a tree diagram – made up of a given number of interlinked headings at several levels, which allows for the intellectual organisation of the GSC's files on the basis of its activities;
- (k) *"file owner"* means the GSC service (i.e. directorate-general / directorate / unit or similar administrative entity in the GSC) which created the file and is responsible for managing its lifecycle;

- (l) "*integrity*" means, with respect to a document, that the information contained in the document and the relevant metadata are complete and unaltered;
 - (m) "*lifecycle of a document*" means all the stages of a document from the moment it is drawn up or received until the moment it is transferred to the historical archives or destroyed;
 - (n) "*lifecycle of a file*" means all stages of a file from the moment of its creation until the moment it is transferred to the historical archives or it is disposed of;
 - (o) "*metadata*" means the data describing the context, content and structure of documents and files and data describing the management of documents and files over time;
 - (p) "*originator*" means an individual who has authored or validated or signed a document;
 - (q) "*registration*" means giving a document a unique identifier and recording metadata about the document in the GSC document registration system;
 - (r) "*retention*" means the period of time following the closure of a file for which the file owner is required to preserve it on the basis of its administrative needs and the associated legal requirements.
2. For the purposes of the DFM policy, the definitions of "electronic signature", "advanced electronic signature", "qualified electronic signature", "electronic seal", "advanced electronic seal" and "qualified electronic seal", "electronic time stamp", "advanced electronic time stamp" and "qualified electronic time stamp" as set out in Article 3 of Regulation 910/2014 of the European Parliament and of the Council¹ shall apply.

¹ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

TITLE II

DOCUMENT AND FILE MANAGEMENT

Article 3

Registration

1. All documents shall be registered as soon as they are drawn up or received by the GSC. It shall be ensured that registered documents cannot be modified and cannot be deleted before the appraisal of the file they belong to.
2. A document shall be registered only once. Documents drawn up by the GSC shall be registered by the GSC service drawing up the document. Documents received by the GSC shall be registered by the receiving service unless the document has already been registered within the GSC.
3. GSC services shall add metadata as needed to documents upon registration. The minimum set of metadata shall be set out in implementing rules. A register of all documents shall be kept.

Article 4

Filing plan and filing

1. The Secretary-General shall decide on a GSC-wide filing plan based on the activities of the GSC prepared by the deputy Director-General for Digital Services.
2. All registered documents shall be filed according to the filing plan.

3. A file shall contain all registered documents on the matter to which it relates as well as the corresponding metadata. Registered documents may be referenced in other files but they shall be managed within one single file. The non-classified metadata of classified documents shall be added to the file.
4. Each GSC service shall be owner of the files it has created.
5. The file owner shall give the file a name, add relevant file metadata, attach the file to the filing plan and ensure file completeness and lifecycle management.

Article 5

Access to and protection of documents and files

Each file owner shall:

- (a) grant access rights to documents and files taking into account the needs of the GSC and its services and applying as a general rule the "duty to share" principle and, where appropriate in the case of sensitive documents or files, the "need to know" principle;
- (b) ensure the integrity and availability of the documents for which it is responsible.

Article 6

Closure of files

1. When all foreseeable actions relating to a file have taken place, the file owner shall remove any non-substantial content that does not need to be preserved from the file and close it.
2. A closed file may only be reopened in exceptional circumstances such as when there is a need to rectify or declassify.

3. Closed files shall remain accessible to GSC services under the same conditions as those which applied before closure.

Article 7

Retention and retention schedule

1. The Secretary-General shall decide on a retention schedule as part of the filing plan prepared by the deputy Director-General for Digital Services. Retention periods shall be set at file level. File owners shall contribute to the setting of retention periods for files under their responsibility on the basis of the administrative value of the file content and the legal obligations. The retention schedule shall establish the conditions under which files and file content are to be preserved or disposed of at the end of the retention period.
2. All files and their content shall be subject to retention.
3. Unless otherwise decided, the retention period shall be five years from the closure of a file.

Article 8

Appraisal, transfer of files to the archives and deletion

1. File owners shall carry out an appraisal of their files in accordance with the procedures set out in the retention schedules at the end of the retention period. The appraisal may be postponed in exceptional circumstances such as when the file is subject to an ongoing court procedure.
2. Files and file content subject to preservation under retention schedules shall be transferred to the historical archives at the end of the retention period. The transfer shall be ensured by the file owner.
3. Archived files shall remain accessible to GSC services under conditions similar to those which applied before their transfer to the archives.

4. Files and file content subject to deletion under retention schedules shall be deleted at the end of the corresponding retention period. Deletion shall be ensured by the file owner.

TITLE III

ELECTRONIC DOCUMENT MANAGEMENT

Article 9

Principle of electronic document management

1. GSC services shall treat electronic documents as primary references, endeavour not to add paper documents to files, and use, wherever possible, electronic communication internally and with third parties to avoid paper production.
2. In cases where there is a business or legal requirement to keep paper originals, GSC services shall create and file an electronic copy of such documents and archive the original for evidentiary purposes. In cases where it is not practicable to create an electronic copy of such documents, a reference to the paper original shall be added to the relevant electronic file.

Article 10

Transmission by electronic means

1. The GSC shall transmit documents to internal or external recipients, through the most appropriate electronic communication channel where possible, taking into account applicable agreements and legal provisions.
2. Documents may be transmitted to the GSC by any communication channel, including by electronic means, unless otherwise required by an agreement or by a legal provision.

Article 11

Electronic signatures, time stamps and seals

1. A coherent infrastructure for the use of electronic signatures, time stamps and seals in the GSC shall be established.
2. Electronic signatures, time stamps and seals shall replace signatures, time stamps and seals on paper wherever possible.

Article 12

Use of electronic signatures, seals and time stamps

1. Electronic documents requiring a signature that are drawn up in electronic form by the GSC and are addressed to an entity outside the GSC shall be signed using an advanced electronic signature unless otherwise required by an agreement or a legal provision. The implementing rules may require a qualified electronic signature for certain categories of documents.
2. Electronic documents requiring a signature that are drawn up in electronic form by an entity within the GSC and are addressed to another entity within the GSC shall be signed using an electronic signature. The implementing rules may require advanced or qualified electronic signatures for certain categories of documents.
3. Electronic documents that are drawn up by the GSC shall allow the identification of their originators, shall be drawn up under such conditions as to guarantee the integrity of their contents and of the relevant metadata and shall be registered and filed in accordance with the conditions laid down in Articles 3 and 4.

4. Electronic documents requiring a seal that are drawn up by the GSC shall bear an advanced electronic seal unless otherwise required by agreement or in a legal provision. The implementing rules may require qualified electronic seals for certain categories of documents.
5. Electronic documents requiring a time stamp that are drawn up by the GSC shall bear an advanced electronic time stamp unless otherwise required by agreement or in a legal provision. The implementing rules may require qualified electronic time stamps for certain categories of documents.

Article 13

Validity of digitised documents

1. A digitised document shall be deemed a reliable copy of the original document if it is the result of an electronic reproduction method that guarantees its fidelity to the original source document, produces metadata related to the digitised document created and allows for its identification. It shall specify the context of the digitisation process and the date of creation of the digitised document.
2. The integrity of the digitised document resulting from an electronic reproduction process shall be ensured by using an electronic fingerprint that ensures that any subsequent modification of the digitised document to which it is attached is detectable.

Article 14
Electronic procedures

1. Procedures within the GSC or between the GSC and entities outside the GSC that require the signature of an authorised person or the approval of a person at one or more stages may be managed by electronic means provided that each intervening person can be clearly and unambiguously identified and the systems ensure that the content that is subject to the procedure is unaltered.
2. For procedures between the GSC and entities outside the GSC, additional conditions and technical assurances may be required by agreement or legal provision.

Article 15
Storage and archiving of electronic documents

1. Electronic documents shall be stored by the GSC throughout the retention period required and archived after this period under the following modalities:
 - (a) the document shall be preserved in the form in which it was drawn up, sent or received or in a form which preserves the integrity of its contents and also of the relevant metadata;
 - (b) the contents of the document and the relevant metadata shall be available to any person who is authorised to have access to them;
 - (c) for a document sent or received electronically, its origin, destination and the date and time of dispatch or receipt are part of the minimum metadata to be captured;

- (d) for an electronic procedure, information concerning the formal stages of the procedure shall be captured to ensure that those stages and the authors and participants can be identified.
2. The operations required to ensure the availability of an electronic document over time shall not be considered to have an impact on the integrity of its content when they are traceable.

TITLE IV

FINAL PROVISIONS

Article 16

Implementation and governance

1. The Secretary-General shall have overall responsibility for overseeing implementation of the DFM policy and ensuring that it is kept under review by the GSC's Advisory Management Board. The Secretary-General, taking into account the availability of required digital solutions, shall adopt implementing rules.
2. The deputy Director-General for Digital Services shall:
- (a) recommend implementing rules and policies where foreseen in the DFM policy and monitor their application. Such implementing rules and policies shall be developed in consultation with GSC directorates-general;
 - (b) provide guidance and support to all GSC departments on applying the DFM policy and its implementing rules and policies;
 - (c) monitor implementation of the DFM policy, ensure that it is applied consistently throughout the GSC and recommend measures to the Secretary-General to this end;

- (d) propose appropriate fora for the consultation of proposals and initiatives related to rules, policies and guidelines, taking into account the existing internal governance structures within the GSC.
3. The deputy Director-General for Digital Services shall oversee the creation of a common single repository for electronic documents for the GSC based on common rules and procedures.
4. Directors-General shall ensure that the DFM policy is applied consistently within their directorates-general and that staff comply with the corresponding obligations. They shall take the necessary measures to ensure that documents, procedures and systems for which they are responsible meet the requirements of that policy, taking into account the guidance and support provided by the deputy Director-General for Digital Services.
5. The Secretary-General or the deputy Director-General for Digital Services shall ensure that the Council, the European Council and their preparatory bodies are informed, as appropriate, about relevant developments in the scope of the DFM policy.

Article 17

Entry into force

1. This decision shall enter into force on 1 December 2020
2. Title 2 shall apply following the adoption of the implementing rules referred to in Article 16. All relevant staff shall make the creation of these rules and the development of the corresponding IT tools a priority.
3. Decision 27/15 of the Secretary-General of the Council is hereby repealed. Its Title 2 shall remain applicable until the full application of this decision.

Done at Brussels,

Jeppe TRANHOLM-MIKKELSEN

5 STEP APPROACH TO DECIDE ON WHAT TO REGISTER

OPTIMUM Information Management

The GSC's Document and File Management (DFM) policy stipulates that all documents shall be registered as soon as they are drawn up or received by the GSC. This guide aims at helping you to understand which types of content corresponds to the definition of a **document** and therefore must be **registered**.

To facilitate the understanding, the relevant elements of the DFM Policy are reproduced.



What is a document?

Any content, in whatever medium, which is drawn up or received by the GSC and is in its possession, and concerns a matter relating to the activities, policies and decisions falling within the sphere of responsibility of the institutions and other entities the GSC assists or relating to its official tasks.

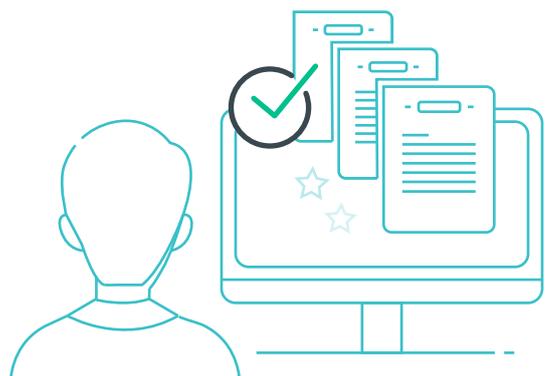
“...Drawn up or received by the GSC...”

Meaning:

- ✓ it contains substantive information
- ✓ it is not of a personal nature
- ✓ it is not short-lived
- ✓ it is approved as ready for transmission by its author (i.e. it is validated by the person who is vested with the authority to adopt it or to take responsibility) or is intentionally delivered to the GSC by its sender.

Registration

- ✓ When a document is received or drawn-up it must be registered . Registration should be made only once.
- ✓ Registration means giving a document a unique identifier and recording metadata about the document in the GSC document registration system.



How to decide on what to register?

It is important to have a coherent approach. However, it is your decision whether or not to register content, based on the definitions in the policy.

Even if it is difficult to make a strict typology, we have designed the steps below to help you make this decision.

These steps should assist you in answering questions such as:

- I found an interesting article on a website. Do I register this article?
- Do I have to register any incoming e-mail?
- Do I register the state of play on a “dossier” that I have prepared for my own reference purposes?
- Do I register a request for an offer?
- Do I register a document that a colleague from another institution shared informally with me before it was officially transmitted to the GSC?



Scope

**Is the content related to the activities and decision making of the European Council or the Council?
Is the content related to a task undertaken by the GSC?**

No? No registration required:

- Messages expressing personal wishes or private information
- Invitations for a lunch break with colleagues
- Personal photos

Yes? Continue to the next step



Origin

**Is the content created by you?
Has the content been formally addressed to you or your service by a sender external to the GSC?
A document should only be registered once either by the originating GSC service or the first recipient in the case of an external message.**

No? No registration required.

- Documentation found online or in a book
- An already registered email forwarded to you

Yes? Continue to the next step



Evidence

Does it serve as a proof of GSC's rights and obligations?
Is the content relevant for keeping record of the activities of the GSC?

Does it record the result of an action?

Does it require follow-up?

No? No registration required.

- Lists of contacts
- The confirmation receipt of an email sent to colleague
- A decision of the Parliament on the publication of Bureau decisions

Yes? Continue to the next step



Formalisation

Has the content been approved as ready for transmission by the person who is empowered to take responsibility for it?

No? No registration required.

- Internal initial drafts subject to changes and subsequently superseded by later versions
- Personal notes, including notes taken during meetings, drafted by an official purely for his/her own reference purposes
- An email sent to colleagues exchanging views about an ongoing drafting

Yes? Continue to the next step



Importance

Does the content reflect substantive information and is not short-lived?

Could the loss of the content entail negative impact (such as administrative or legal)?

No? No registration required.

- Emails circulated within an informal, preliminary exchange of views between colleagues or containing iterations on an ongoing drafting by way of a preliminary brainstorming without constituting the position of the administrative entity
- Logistical meeting arrangements

Yes? Register it!





Council of the European Union
General Secretariat

Digital Services - SMART
The Deputy Director-General

GSC INTERNAL NOTE
Brussels, 28 January 2021
SMART 21/0021

NOTE FOR DIRECTORS-GENERAL

Subject: Use of commercial messaging apps

1. Following requests to SMART for clarification on the use of commercial messaging apps, this note gives background information and guidance for you and your staff on using such apps.

Background

2. Most people are used in their private lives to using apps such as WhatsApp, Signal, Telegram, etc. and are familiar with the functionalities they offer. It is understandable that people naturally also wish to use these functionalities in certain professional situations. Messaging apps are very convenient, but they carry security and privacy risks. In our information-driven environment where GSC staff handle significant quantities of sensitive information, we have a responsibility as civil servants to manage such information in compliance with security and data protection rules.
3. As the provision of such services involve a cost to the operators, they are always looking for new revenue streams so they can continue offering their service at no direct cost for users. Remember the old adage about social media: if there is no cost for using the product, assume that your information is the product.
4. It is very hard to establish the security status and trustworthiness of such apps. The encryption mechanisms they offer are not sufficient to guarantee confidentiality of your conversation and of the files you share (including pictures, videos, links, metadata, see below), as an app may have other flaws allowing information leakage. Also, the encryption used does not protect against potential access by capable state actors. Having said this, encryption provides an initial layer of protection, so make sure any apps you use **support end-to-end encryption**. This is the case with both WhatsApp and Signal.
5. There are also substantial data protection concerns regarding the use of such apps, especially the metadata related to use of the apps (user name / telephone number / email address / device information / location data / address book / chat group names / etc.). You will find further information on two more commonly used apps below.

WhatsApp

6. As regards WhatsApp, you should be aware that your user data, any personal data and files you share through WhatsApp will end up in the US or other third countries outside the EEA, this means that it can be accessible by public authorities of those third countries under applicable legislation.
7. You may also have seen press reports about WhatsApp forcing users to agree to sharing information with Facebook if they want to keep using the service. Facebook, which owns WhatsApp, has indicated that European users would not see the same data-sharing changes.
8. It has also stated that WhatsApp does not share European region WhatsApp user data with Facebook for the purpose of Facebook using this data to improve its products or advertisements. The problem is that the terms and conditions that will apply to users in the EEA are still not clear at the moment. European data protection authorities are looking into the issue.

Signal

9. You may be aware that the Commission has advocated the use of Signal as a messaging tool. Signal is operated by a US tax-exempt foundation funded by donations. It offers end-to-end encryption and by default encrypts metadata (unlike WhatsApp) as well as all local files. It supports encrypted group calls. However, it offers fewer features compared to WhatsApp and it is subject to similar security concerns.
10. However, from a privacy perspective Signal is currently less intrusive than WhatsApp: it does not collect user data in the same way as WhatsApp and it only stores your phone number.

Guidance for GSC staff

11. Please note that commercial messaging apps **are not corporate information sharing tools** in the GSC's IT portfolio, i.e. they are not services for which SMART can provide any support, backup or assurance. If you do use any, please consider your privacy carefully.
12. The following guidance on using any messaging app in a professional context is strongly advised for GSC staff:
 - **Only use** messaging apps **for short-lived, ephemeral chat** about public or non-sensitive content; they are **not** to be used for sharing substantive content on sensitive matters;
 - **Make sure** that you know who is a member of any chat group you are in, and that this membership is regularly reviewed;
 - **Respect** the privacy and integrity of individuals at all times, as well as the information provided by them.

In short, use common sense concerning the content you post in chat messages.

13. As a reminder, for internal communication with GSC colleagues, email (on your laptop/hybrid or your mobile device) is much safer than any messaging app, as the messages are encrypted and do not leave the Council's IT environment, which is well protected. Similarly, chat messages in the Avaya IX Workplace app remain on our servers. Emails sent to the Commission, EEAS and European Parliament are also encrypted.

14. However, emails sent externally (e.g. to the Presidency, member states, or other external partners) are **not** encrypted by default, and are therefore **not** more secure than using a messaging app.