

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(81) 179 final

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## OPENING OF THE COMMUNITIES' HISTORICAL ARCHIVES TO THE PUBLIC

(Communication from the Commission to the Council)

COM(81) 179 final

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

on the opening of the Communities' historical archives to the public

1. In 1978 the Commission decided that the time had come to open the Communities' historical archives to the public. In this it was following the example of other international organizations (e.g. the United Nations, the Western European Union and the Council of Europe) which had already introduced rules or made internal arrangements giving the public access to their archives. The Commission felt that there were two further, specifically Community reasons for such a move. These were:

- (i) access for researchers to the historical archives would encourage research on Community history, thereby stimulating public interest in the process of European integration;
- (ii) public access to the historical archives would make the workings of the European institutions more open to public scrutiny. (In general, the public still regards the institutions as rather secretive.)

2. The Commission's initial premise was that access to the Communities' archives should be at least as liberal as that allowed by the most liberal Member State. On this basis it considered that Community archives should be made public after thirty years, the period adopted by most Member States, either by law or by special dispensation of the relevant ministry from the period prescribed by law. The Commission naturally recognized that exceptions to the thirty-year rule would be necessary for some confidential and secret documents.

3. From the outset the Commission sought to reach agreement with the other institutions on how the Communities' archives should be made accessible to the public. Discussions within the Council revealed that most Member States were in favour of binding Community rules. Since a Community regulation would be directly applicable in the Member States, it would have the advantage of ensuring that records held by the institutions and Community records held in national archives would be given the same treatment. The

Commission recognized however that a Community regulation could only provide a framework, establishing the basic principles of public access, leaving the task of internal implementation to the institutions. There was general agreement on public access after thirty years, except in the case of documents retaining secret or confidential status.

4. The Commission called meetings of national archives experts and held informal consultations with the other institutions on the main points of a Community regulation. In the course of these discussions, general agreement emerged on the draft texts in Annexes II and III. The Commission is therefore in a position to submit the following binding Community instruments to the Council:

- (a) for assent: a draft Commission Decision (ECSC) on the historical archives of the European Coal and Steel Community;
- (b) for decision: a draft Council Regulation (EEC, Euratom) on the historical archives of the European Economic Community and the European Atomic Energy Community.

Separate instruments are required because of the different procedures to be followed. The only difference of substance between the texts relates to the treatment of certain Euratom records which are subject to special provisions of the Treaty or secondary legislation. The Commission considered it preferable to submit two proposals, covering all the Communities' records, even though its immediate concern at this stage is the ECSC decision since the records of that Community should be made public on 1 January 1983 under the thirty-year rule.

5. The Commission has opted for binding legal instruments because the arrangements contemplated will impose:

- (a) an obligation on the institutions to establish historical archives and open them to the public after thirty years. This obligation on the institutions is accompanied by right of access for researchers to Community records which are more than thirty years old (unless they fall into one of the excluded categories);

- (b) an obligation on Member States to refrain from releasing Community records before the end of the thirty-year period, even if current administrative practice would allow some of them to do so.

In the Commission's view, these objectives can only be attained by binding legal instruments.

6. Deposit of the historical archives

The texts submitted by the Commission are based on the view that, although the preparation and processing of the Communities' historical archives should be the subject of Community legislation, the historical archives themselves should remain under the authority of the institution to which they now belong. Another approach - namely, that the historical archives of all the institutions should be placed under the authority of a single body - was suggested in the course of the Commission's consultations with national experts. This would be a closer reflection of the way things are handled nationally in many Member States. The Commission feels however that this would not be the most appropriate arrangement, given the particular characteristics of the institutions.

7. In both texts Article 7 paragraph 1 leaves each institution free to choose where to hold its historical archives. The vast majority of national experts felt that the historical archives of all the institutions should be centralized. The Commission shares this view, both for practical reasons (ease of consultation by researchers) and on financial grounds.

The Commission, for its part, has already agreed to deposit the originals of its historical archives with the European University Institute in Florence. This is in line with the desire, expressed by the Commission on a number of occasions, to promote the development of this Institute and its history department in particular. It has been subsidizing the department's research project on integration since 1975. In June 1980 the Commission informed the Council of its intention (statement to COREPER on 18 June), adding that a complete microfilm collection of its archives would be kept at the Commission and made available to the other institutions and the Member States.

8. Records dealing with the preparation of the Treaties

In the course of the Commission's consultations with national experts, the question was raised of how treatment of records of the preparations leading to the signature of the Treaties of Paris and Rome, and the various Accession Treaties, would be affected by the texts. The Commission's view is that papers relating to the Treaties of Paris and Rome would not form part of the Communities' historical archives as defined in Article 2 ~~paragraph~~ of the texts. By contrast given the deep involvement of the institutions in the negotiation procedure, comparable documents relating to the Accession Treaties would form part of the Communities' historical archives and would therefore be subject to the thirty-year rule. The first group of records would be a matter for Member States' Governments. On 3 April 1959 (record of 51st meeting of COREPER) they agreed that access to these records would be severely restricted. It is suggested that Member States' Governments should now review the position with a view to ensuring that these records are handled in the same way as those relating to the Accession Treaties.

9. Implementation

Since the two texts are limited to defining basic principles (see 3 above), each institution is authorized to adopt implementing rules (Article 8 of the texts). It would of course be highly desirable if the institutions could act in concert in applying these basic principles. The Commission believes that this can be best achieved by informal contacts as and when required rather than formalized procedures. Informal contacts have proved their worth over the last few months. The Commission for its part is ready and willing to pursue such contacts with the other institutions and with national experts.

10. Commentary

Detailed comments on individual articles of the texts are set out in Annex IV.

Commission Decision (ECSC) No ..... establishing  
and opening to the public the historical archives  
of the European Coal and Steel Community

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel  
Community, and in particular the first paragraph of Article 95 thereof,

Having regard to the Opinion of the Consultative Committee,

Having regard to the Assent given unanimously by the Council,

Whereas over the years the European Coal and Steel Community has accumulated  
a vast collection of documents and records ; whereas these documents and  
records are the property of the Community, which enjoys the most extensive  
legal capacity accorded to legal persons in the Member States ;

Whereas some of the documents and records produced by the Community are  
physically held 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 it is standard practice for both the Member States and international organizations to allow public access to their archives after a number of years ;

Whereas the processing and critical analysis of Community documents and records would not only be of value to historical research in general but would also clarify and facilitate the activities of bodies involved in Community affairs and thereby contribute to the attainment of the Community's objectives ; whereas, if the Community's objectives as defined in Articles 2, 3 and 4 are to be attained in accordance with the first paragraph of Article 95 of the Treaty, there should be common rules governing the opening of the Community's archives ;

Whereas, to ensure that the Community's documents and records relating to its own activities are not released to the public by the national archives before the expiry of the period considered necessary by the Community institutions, these rules should be made binding both on the Community and on the Member States ;

Whereas the general principles alone need to be determined, adoption of the requisite implementing rules being left to the institutions,

HAS ADOPTED THIS DECISION :

Article 1.

1. The institutions of the European Coal and Steel Community shall establish historical archives and open them to the public on the terms laid down by this Decision after the expiry of a period of thirty years starting from the date of the creation of the document or record. For the purposes of this Decision the Consultative Committee and the Court of Auditors shall be treated in the same way as the institutions referred to in Article 7 of the Treaty.

2. For the purposes of this Decision :

(a) "the 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 representatives or servants in the course of their work, which relate to the activities of the European Coal and Steel Community;

(b) the "historical archives" consist of that part of the Community archives which has been selected, on the terms laid down in Article 6 of this Decision, for permanent preservation.

3. All documents and records which were freely accessible 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 thirty-year period provided for in paragraph 1, access to the historical archives shall be given to any person applying for it who agrees to abide by internal rules established for the purpose by each institution.



Article 2

This Decision does not apply to personnel files of the Community's 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 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

1. Documents and records which, when addressed to one of the institutions, are covered by the obligation for professional or business secrecy shall not be released to the public after the thirty-year period unless the institution to which the document or record was addressed, having received an application to consult it, considers that the obligation for professional or business secrecy no longer applies to the relevant document(s) or record(s). In the event of doubt as to the need to maintain protection for certain information, access may be authorized only with the agreement of the person or company concerned.

2. Where the document(s) or record(s) in respect of which the question of professional or business secrecy arises has(have) been received by one of the institutions via a Member State or another institution, it shall be for the sending Member State or institution to take the decisions required by paragraph 1.

Article 5

1. For the sake of compliance with the thirty-year rule provided for in Article 1, paragraph 1, each institution shall in good time, and no later than the twenty-fifth year following the date of a document or record, examine all documents and records graded confidential or higher and decide whether or not to declassify them. Documents and records not declassified at the first such examination shall be re-examined periodically and at the latest 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 a procedure whereby documents and records may be declassified by agreement.

Article 6

Where documents and records which are physically held in their official public archives are identical in content to documents and records contained in the archives or historical archives of the Community, the Member States shall refrain from releasing such documents or records to the public on terms less strict than those provided for in Articles 1, 2, 3 and 4 of this Decision.

Article 7

Each institution shall transfer to the historical archives all documents and records contained in their current archives no later than fifteen years after their date of creation.

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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.

Article 8

1. Each institution may hold its historical archives in whatever place it considers most appropriate.
2. Each institution shall on request supply the other institutions and the Member States with a complete set of microform copies of its historical archives, in so far as public access to them is available under this Decision.

Article 9

Each institution may adopt detailed rules for the internal application of this Decision.

Article 10

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

Done at Brussels,

For the Commission

Council Regulation (EEC, Euratom) N° ... establishing and opening to the public the historical archives of the European Economic Community and the European Atomic Energy Community

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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,

Having regard to the Opinion of the European Parliament,

Whereas over the years the European Economic Community and the European Atomic Energy Community have accumulated a vast collection of documents and records; whereas these documents and records are the property of the two Communities, which both enjoy the most extensive legal capacity accorded to legal persons in the Member States;

Whereas some of the documents and records produced by the Communities are physically held 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 it is standard practice for both the Member States and international organizations to allow public access to their archives after a number of years;

Whereas there should be common rules governing the opening to the public of the documents and records of the European Economic Community and the European Atomic Energy Community; whereas, to see that the Communities' documents and records relating to their own activities are not released to the public by national archives before the expiry of the period considered necessary by the Community institutions, these rules should be made binding both on the Communities and on the Member States;

Whereas the processing and critical analysis of Community documents and records would not only be of value to historical research in general but would also facilitate the activities of bodies involved in Community affairs and thereby contribute to the attainment of the Communities' objectives;

Whereas the Treaties confer no powers of action regarding the establishment of common rules for Community archives;

Whereas the general principles alone need to be determined, adoption of the requisite implementing rules being left to the institutions,

HAS ADOPTED THIS REGULATION :

Article 1

1. The institutions of the European Economic Community and the European Atomic Energy Community (hereinafter the institutions) shall establish historical archives and open them to the public on the terms laid down by this Regulation after the expiry of a period of thirty 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, paragraph 1 of the EEC Treaty and Article 3, paragraph 1 of the Euratom Treaty.
  
2. For the purposes of this Regulation:
  - (a) "the 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 representatives or servants in the course of their work, which relate to the activities of the European Economic Community and/or the European Atomic Energy Community (hereinafter the European Communities);
  
  - (b) the "historical archives" consist of that part of the Community archives which has been selected, on the terms laid down in Article 6 of this Regulation, for permanent preservation.
  
3. All documents and records which were freely accessible 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 thirty-year period provided for in paragraph 1, access to the historical archives shall be given to any person applying for it who agrees to abide by internal rules established for the purpose by each institution.

Article 2

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

Article 3

1. The public shall not have access to:

- (a) documents and records that have been classified in accordance with Article 10 of Regulation N° 3 of the Council of 31 July 1958 implementing Article 24 of the Treaty establishing the European Atomic Energy Community (OJ 1958, p. 406) and have not already 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.

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

1. Documents and records which, when addressed to one of the institutions, are covered by the obligation for professional or business secrecy shall not be released to the public after the thirty-year period unless the institution to which the document or record was addressed, having received an application to consult it, considers that the obligation for professional or business secrecy no longer applies to the relevant document(s) or record(s). In the event of doubt as to the need to maintain protection for certain information, access may be authorized only with the agreement of the person or company concerned.

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2. Where the document(s) or record(s) in respect of which the question of professional or business secrecy arises has (have) been received by one of the institutions via a Member State or another institution, it shall be for the sending Member State or institution to take the decisions required by paragraph 1.

Article 5

1. For the sake of compliance with the thirty-year rule provided for in Article 1, paragraph 1, each institution shall in good time, and no later than the twenty-fifth year following the date of a document or record, examine all documents and records graded confidential or higher and decide whether or not to declassify them. Documents and records not declassified at the first such examination shall be re-examined periodically and the latest 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 a procedure whereby documents and records may be declassified by agreement.

Article 6

Where documents and records which are physically held in their official public archives are identical in content to documents and records contained in the archives or historical archives of the European Communities, the Member States shall refrain from releasing such documents or records to the public on terms less strict than those provided for in Articles 1, 2, 3 and 4 of this Regulation.



Article 7

Each institution shall transfer to the historical archives all documents and records contained in their current archives no later than fifteen 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.

Article 8

1. Each institution may hold its historical archives in whatever place it considers most appropriate.
2. Each institution shall on request supply the other institutions and the Member States 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 detailed rules for the internal application of this Regulation.

Article 10

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

Done at Brussels,

For the Council

Commentary

1. In both texts Article 1 paragraph 1 spells out the principle that the Community's institutions must open their historical archives to the public after thirty years. In the Commission's view, this should be an obligation in the sense that the institutions not only have the right but also a duty to allow access, on expiry of the thirty-year period, to all records which are more than thirty years old other than those excluded by Articles 2, 3 or 4.
2. Since the records of individual institutions - rather than joint records - are being made public, the Economic and Social Committee and the Court of Auditors must be treated as "true institutions" since their records are of potential interest to researchers also.
3. Article 1 paragraph 2 defines "Community archives" and "historical archives" as broadly as possible. The definition of "historical archives" should be read in conjunction with Article 7.
4. The purpose of Article 1 paragraph 3 is to make it clear that records which were freely accessible when produced are not subject to the thirty-year rule simply because they form part of the historical archives.
5. Article 1 paragraph 4 accords right of access to anyone wanting to consult the records. However, free access presupposes that the researcher concerned is prepared to accept a discipline similar to that operating in, for example, public libraries. Each institution will be free to draw up its own internal rules.
6. As far as records excluded from the general access rule are concerned, Articles 2, 3 and 4 keep such exemptions to a strict minimum. This is true not only of records completely excluded by Articles 2 and 3, but also of records which raise the problem of professional or business secrecy (Article 4). Here too the Commission considers that it should be as liberal as possible while always respecting the Treaty rules concerning professional secrecy.

Article 3 makes no clear, formal distinction between classified and other records for the simple reason that the Community does not have a uniform security grading system. This is why reference has had to be made to "the rules and practices of each institution". However the Commission feels that any institution that has not done so should produce security grading rules. The Commission produced its own rules in 1975.

7. The only real difference between the two texts relates to the category of records excluded. In the Euratom context there are far more highly-sensitive areas, to which the public can never be given access, than in the ECSC context. Thus records graded "EURA - Top Secret", "EURA - Secret", "EURA - Confidential" and "EURA - Restricted" have been excluded.

To ensure that as many records as possible will be available to researchers on expiry of the thirty-year period, Article 5 makes provision for a declassification procedure. In the Commission's view the procedure should get under way not later than the twenty-fifth year following the date of a classified document or record.

8. Many problems are likely to arise when the institutions begin to review classified records given the fact that many of these refer to matters lying outside the originating institution's control. In these cases declassification by a single institution will probably prove impossible. This is why the texts make provision for the introduction of a procedure for declassification by agreement between the institutions and the Member States. To ensure that information which one party wishes to keep secret is not released, the basic principle must be that each institution and each Member State should undertake to honour each other's security grading.

9. The need for binding rules flows from Article 6. The fact of the matter is that a substantial proportion of records produced by the institutions are identical in content to records held in Member States' capitals. To ensure that Community records are not released through national archives, which do not necessarily apply the thirty-year rule, it would seem to be desirable to make Member States comply with the same rules as the institutions as far as records of this kind are concerned.

However the obligation imposed on the Member States is a limited one for three reasons:

- it relates exclusively to records forming part of the Community archives, in other words to records relating to the Community's own activities; Member States remain quite free as regards records in general;
- the Member States are merely required to refrain from applying rules less strict than those set out in Articles 2, 3 and 4. They may not, for instance, release records before expiry of the thirty-year period but there is nothing to prevent any Member State imposing a longer period. Indeed a longer period is required by law in a number of Member States;
- lastly, the Commission considers that the obligation should apply in respect of public archives only. The inclusion of private archives would create so many problems that the possibility is best disregarded.

10. Article 7 attempts to ensure that preparatory work gets under way in good time so that historical archives can in fact be made public on expiry of the thirty-year period. The criteria to be applied in separating records to be preserved from those with no administrative or historical interest will be laid down by each institution.

11. The purpose of Article 8, paragraph 1 is explained under 7 above.

Complete sets of microform copies will be supplied to the other institutions and Member States on request only.

12. Articles 9 and 10 are technical and legal and require no further explanation.