



EN

COUNCIL OF
THE EUROPEAN UNION

GENERAL SECRETARIAT

DG F
Information policy
Transparency
Public Relations

Basic texts on transparency concerning the activities of the Council of the European Union

January 1999

TRAN SP AR EN CY

**Basic texts
on transparency
concerning
the activities of the Council
of the European Union**

January 1999

CONTENTS

Part I: Provisions in force concerning the transparency and openness of the Council's discussions	5
I. Declaration No 17 annexed to the Final Act of the Treaty on European Union (7 February 1992)	7
II. Birmingham Declaration (16 October 1992)	11
III. Conclusions of the Edinburgh European Council on transparency and implementation of the Birmingham Declaration (12 December 1992)	15
IV. Council Resolution on the quality of drafting of Community legislation (8 June 1993)	21
V. Conclusions of the Copenhagen European Council on access to information (21 and 22 June 1993)	25
VI. Interinstitutional Agreement between the European Parliament, the Council and the Commission on democracy, transparency and subsidiarity (25 October 1993)	29
VII. Council Decision of 6 December 1993 adopting the Council's Rules of Procedure	33
VIII. Code of Conduct concerning public access to documents, approved by the Council and the Commission on 6 December 1993	43
IX. Council Decision on public access to Council documents (20 December 1993)	47
X. Council conclusions on transparency approved on 29 May 1995	51
XI. Code of Conduct on public access to the minutes and statements in the minutes of the Council acting as legislator (2 October 1995)	55
XII. Decision of the Secretary-General of the Council relating to fees in the context of public access to Council documents (27 February 1996)	59
XIII. First report on the implementation of Council Decision 93/731/EC on public access to Council documents (July 1996)	63
XIV. Council conclusions on the review of Council Decision 93/731/EC on public access to Council documents (6 December 1996)	83
XV. Council Decision amending Council Decision 93/731/EC on public access to Council documents (6 December 1996)	87
XVI. Presidency conclusions on transparency in the activities of the Council acting in the field of Title VI of the TEU (19 March 1998)	91
XVII. Council Decision on establishing a public register of Council documents (19 March 1998)	95
XVIII. Second report on the implementation of Council Decision 93/731/EC on public access to Council documents (June 1998)	99

Part I

**Provisions in force concerning
the transparency and openness
of the Council's discussions**

I.

**Declaration No 17 annexed to the Final Act
of the Treaty on European Union
(7 February 1992)**

Selected instruments taken from the Treaties, Book I, Volume 1, p. 665

DECLARATION (No 17)
on the right of access to information
(7 February 1992)

The Conference considers that transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration. The Conference accordingly recommends that the Commission submit to the Council no later than 1993 a report on measures designed to improve public access to the information available to the institutions.

II.

Birmingham Declaration

(16 October 1992)

Bulletin of the European Communities, No 10-1992, p. 9

Annex I

Birmingham Declaration — A community close to its citizens (16 October 1992)

Reference: Commission communication on the principle of subsidiarity: point 1.1.1 of this Bulletin

1.8. We reaffirm our commitment to the Maastricht Treaty: we need to ratify it to make progress towards European Union if the Community is to remain an anchor of stability and prosperity in a rapidly changing continent, building on its success over the last quarter of a century.

As a community of democracies, we can only move forward with the support of our citizens. We are determined to respond to the concerns raised in the recent public debate. We must:

- demonstrate to our citizens the benefits of the Community and the Maastricht Treaty;
- make the Community more open, to ensure a better informed public debate on its activities;
- respect the history, culture and traditions of individual nations, with a clearer understanding of what Member States should do and what needs to be done by the Community;
- make clear that citizenship of the Union brings our citizens additional rights and protection without in any way taking the place of their national citizenship.

Foreign Ministers will suggest ways, before the Edinburgh European Council, of opening up the work of the Community's institutions, including the possibility of some open Council discussion — for example on future work programmes. We welcome the Commission's offer to consult more widely before proposing legislation, which could include consultation with all the Member States and a more systematic use of consultation documents (Green Papers). We ask the Commission to complete by early next year its work on improving public access to the information available to it and to other Community institutions. We want Community legislation to become simpler and clearer.

We stress the European Parliament's important role in the democratic life of the Community and we welcome the growing contacts between national parliaments and the European Parliament. We reaffirm that national parliaments should be more closely involved in the Community's activities. We shall discuss this with our parliaments. We welcome the Commission's readiness to respond positively to

requests from national parliaments for explanations of its proposals. We underline the importance we attach to the Conference of Parliaments and to the Committee of the Regions.

We reaffirm that decisions must be taken as closely as possible to the citizen. Greater unity can be achieved without excessive centralization. It is for each Member State to decide how its powers should be exercised domestically. The Community can only act where Member States have given it the power to do so in the Treaties. Action at the Community level should happen only when proper and necessary: the Maastricht Treaty provides the right framework and objectives for this. Bringing to life this principle — 'subsidiarity', or 'nearness' — is essential if the Community is to develop with the support of its citizens. We look forward to decisions at Edinburgh on the basis of reports on:

- adapting the Council's procedures and practices — as the Commission for its part has already done — so that the principle becomes an integral part of the Community's decision-making, as the Maastricht Treaty requires;
- guidelines for applying the principle in practice, for instance by using the lightest possible form of legislation, with maximum freedom for Member States on how best to achieve the objective in question. Community legislation must be implemented and enforced effectively, and without interfering unnecessarily in the daily life of our citizens.

We shall also have a look at the first fruits of the Commission's review of past Community legislation with examples.

Making the principle of subsidiarity work should be a priority for all the Community institutions, without affecting the balance between them. We will seek an agreement about this with the European Parliament.

The Maastricht Treaty will bring direct benefits to individual citizens. All of us — Council, Commission and Parliament — must do more to make this clear.

The European Council, in conformity with the responsibilities given to it by the Treaty, will ensure that the fundamental principles of the European Union will be fully observed.

III.

**Conclusions of the Edinburgh European Council on transparency and
implementation of the Birmingham Declaration
(12 December 1992)**

Bulletin of the European Communities, No 12-1992, pp. 18-20

Annex 3 to Part A

Transparency — Implementation of the Birmingham declaration

(12 December 1992)

Access to the work of the Council

I.24. The process of opening up the work of the Council will start in the following areas:

(a) *Open debates on work programme and on major initiatives of Community interest*

(i) Open orientation debates on relevant Presidency or Commission work programmes, in both the General Affairs Council and the Ecofin (Economic and Financial Affairs) Council. The timing will be for decision by the Presidency.

(ii) There should be regular open debates on major issues of Community interest. It will be for the Presidency, any Member State or the Commission to propose issues for open debate. The decision will be taken by the Council on a case-by-case basis.

(b) *Legislation*

Major new legislative proposals will, whenever appropriate, be the subject of a preliminary open debate, in the relevant Council, on the basis of the Commission's legislative proposal. It will be for the Presidency, any Member State or the Commission to propose specific subjects for a debate. The decision will be taken by the Council on a case-by-case basis. Negotiations on legislation in the framework of the Council shall remain confidential.

(c) *Publication of voting records*

When a formal vote is taken in Council, the record of the vote (including explanations of vote where delegations request these) shall be published.

(d) *The decision on holding an open debate on a specific item under point (a ii) and (b) shall be taken by unanimity.*

(e) *'Public access' will be achieved by televising the debate for viewing in the press area of the Council building.*

Information on the role of the Council

Transparency of the Council's decisions

I.25. Extension to all Council formations of the practice, established over the years in most Councils, of publishing a full description in the press release of the conclusions reached by the Council (exceptions being made for cases where such information would damage the interests of the Member States, the Council, or the Community — e.g. negotiating mandates). More systematic emphasis on publication of explanatory summaries concerning important 'A' points adopted at the Council. Greater efforts to

be made when drafting conclusions to make them understandable to the public.

Better background information on Council decisions (e.g. objective, history, link to other subjects) to be made available, if possible for distribution at pre-Council press briefings, in the form of background notes prepared by the Secretariat in user-friendly terms. This initiative could be extended in the future to cover matters relating to common foreign and security policy and internal and justice affairs, taking into account the specific need for confidentiality in some areas.

Systematic background pre-Council press briefings by Presidency, assisted by Council Secretariat (today not all Presidencies hold such briefings and often they are limited to the national press corps).

Publication of the common positions established by the Council under the procedures of Articles 189b and 189c and the explanatory memorandum accompanying them.

It is important to make all information material available rapidly in all Community languages.

Increase in general information on the role and the activities of the Council

I.26. The annual report, which is currently published after long delays, to be published from now on early in the new year on the responsibility of the Secretary General. Aim to make it more interesting and more understandable to the public — and complementary to, rather than duplicating, the Commission's annual report. There should also be a short summary aimed at broad circulation.

Increase in the Council's information activities in general including a reinforcement of the Press Service. Stepping up of the already quite intensive information activity (group visits) performed by the services of the Secretariat. Establishing a programme for visits of journalists — particularly EC news editors — not based in Brussels (in cooperation with the Commission).

Cooperation and more rapid transmission of material

I.27. Activating the existing information group of the Council and extending it to the other institutions with a view to developing coordinated information strategies.

Cooperation between Member States and Community institutions in the information field.

Use of new communication technologies: databases, electronic mail for making information available outside Council meeting places (Brussels/Luxembourg).

Simplification of and easier access to Community legislation.

Making new Community legislation clearer and simpler

I.28. While the technical nature of most texts and the need to compromise among the various national positions often complicate the drafting process, practical steps should nevertheless be taken to improve the quality of Community legislation, such as the following:

guidelines for the drafting of Community legislation should be agreed upon, containing criteria against which the quality of drafting of legislation would have to be checked;

delegations of Member States should endeavour, at all levels of the Council proceedings, to check more thoroughly the quality of legislation;

the Council Legal Service should be requested to review draft legislative acts on a regular basis before they are adopted by the Council and make suggestions where necessary for appropriate redrafting in order to make such acts as simple and clear as possible;

the jurist-linguist group, which does the final legal editing of all legislation before it is adopted by the Council (with the participation of national legal experts), should give suggestions for simplifying and clarifying the language of the texts without changing their substance.

Making existing Community legislation more accessible

I.29. Community legislation can be made more readily accessible in a concise and intelligible form through a speedier and more organized use of consolidation or codification; an improvement of the Celex database system should also be considered.

Improving and organizing consolidation or codification of Community legislation

The two possible approaches — unofficial consolidation and official codification — must be carried out in parallel:¹

The Office for Official Publications of the European Communities has an important role to play in respect of unofficial consolidation. Planning of this began some time ago and a new system will be operated as from 1993 on, whereby the consolidated version of all Community legislation undergoing amendments can be made automatically available following any such amendment; two years later, the system should be able to cover the whole of Community legislation (including past legislation) provided that there is adequate funding. Consolidated legislation should be immediately published (in the C series of the Official Journal), possibly after adding the 'considérants', and/or made available through Celex.

Official codification is important because it provides legal security as to the law which is applicable at a certain moment concerning a specific issue.

Since official codification can only be done through the relevant legislative procedures, priorities need to be established and an accelerated working method agreed upon between the three institutions which have legislative powers.

- Official codification should take place on the basis of agreed priorities. The Commission will propose such priorities in its work programme after appropriate consultation.
- A jointly acceptable accelerated working method should be sought allowing codified Community law (replacing existing legislation without changing its substance) to be adopted in a speedy and efficient way; a consultative group composed of the Legal Services of the Commission, the Council and the Parliament would help to carry out the necessary ground work to permit the
 - adoption of codified Community legislation as rapidly as possible under the Community's normal decision-making procedure.

Strengthening the Celex data system²

Celex should be improved with a view to

- catching up with the delay as to
- existing legislation,

The necessary financial means should be made available.

- feeding the database in the Greek, Spanish and Portuguese languages,
- making the system more user-friendly and accessible to the public.

¹ A clear distinction must be made between:

- unofficial consolidation, which consists in editorial assembling, outside any legislative procedure, of the scattered parts of legislation on a specific issue, which has no legal effect and which leaves all such parts in force (see, for instance, the consolidated text of the Financial Regulation, OJ C 80, 25.3.1991, p. 1);

- official codification, which is achieved through the adoption of a formal legislative Community act through the relevant procedures, while repealing all pre-existing texts (see, for instance, the Council Regulation on the common organization on the market in fishery products, OJ L 354, 23.12.1991 p. 1), must be pursued in parallel.

² The Celex system (automated documentation on Community law) was set up in 1970 as an inter-institutional computerized documentation system and was made available to the public in 1981; it contains the entire body of EC law. On 13 November 1991, the Council adopted a resolution on the reorganization of the operating structures of Celex with a view to enhancing its effectiveness (OJ C 308, 28.11.91 p. 2).

IV.

**Council Resolution
on the quality of drafting
of Community legislation
(8 June 1993)**

OJ No C 166, 17 June 1993, p. 1.

I

*(Information)***COUNCIL****COUNCIL RESOLUTION****of 8 June 1993****on the quality of drafting of Community legislation**

(93/C 166/01)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaties establishing the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community,

Having regard to the conclusions of the Presidency of the European Council meeting in Edinburgh on 11 and 12 December 1992 to the effect that practical steps should be taken to make Community legislation clearer and simpler,

Whereas guidelines should be adopted containing criteria against which the quality of drafting of Community legislation would have to be checked;

Whereas although such guidelines would be neither binding nor exhaustive they would aim to make Community legislation as clear, simple, concise and understandable as possible;

Whereas these guidelines are intended to serve as a reference for all bodies involved in the process of drawing up acts for the Council, not only in the Council itself but also in the Permanent Representatives Committee and particularly in the working parties; whereas the Council Legal Service is asked to use these guidelines to formulate drafting suggestions for the attention of the Council and its subsidiary bodies,

HAS ADOPTED THIS RESOLUTION:

The general objective of making Community legislation more accessible should be pursued, not only by making systematic use of consolidation but also by implementing the following guidelines as criteria against which Council texts should be checked as they are drafted:

1. the wording of the act should be clear, simple, concise and unambiguous; unnecessary abbreviations, 'Community jargon' and excessively long sentences should be avoided;
2. imprecise references to other texts should be avoided as should too many cross-references which make the text difficult to understand;
3. the various provisions of the acts should be consistent with each other; the same term should be used throughout to express a given concept;
4. the rights and obligations of those to whom the act is to apply should be clearly defined;
5. the act should be laid out according to the standard structure (chapters, sections, articles, paragraphs);
6. the preamble should justify the enacting provisions in simple terms;
7. provisions without legislative character should be avoided (wishes, political statements);
8. inconsistency with existing legislation should be avoided as should pointless repetition of existing provisions. Any amendment, extension or repeal of an act should be clearly set out;
9. an act amending an earlier act should not contain autonomous substantive provisions but only provisions to be directly incorporated into the act to be amended;
10. the date of entry into force of the act and any transitional provisions which might be necessary should be clearly stated.

V.

**Conclusions of the Copenhagen European Council
on access to information
(21 and 22 June 1993)**

SN 180/1/93

15. A COMMUNITY CLOSE TO ITS CITIZENS

The European Council invited all institutions to ensure that the principles of subsidiarity and openness are firmly anchored in all spheres of Community activity and fully respected in the day-to-day operations of the institutions.

As regards the principle of subsidiarity, the European Council noted with satisfaction that the Commission is now submitting proposals only when it considers that they fulfil the subsidiarity criteria, and welcomed in general the substantial reduction in the volume of Community legislation foreseen in the Commission's legislative programme for 1993 compared to earlier years. The wider consultation by the Commission before submitting important new proposals and, in particular, the use of "green papers" relating to important new activities as well as a cost and benefit analysis of new proposals are also highly promising. It looked forward to the completion before the European Council in December of the Commission's review of existing and proposed legislation with regard to the subsidiarity principle.

The European Council noted with satisfaction that the Council and the Commission are now applying the principles, guidelines and procedures on subsidiarity decided at Edinburgh as an integral part of the decision making procedure. It hopes that the European Parliament will soon be able to join in this effort.

On openness, the European Council noted the first steps taken in response to the conclusions of the Edinburgh European Council regarding the opening of certain Council debates to the public, simplification and codification of Community legislation and information in general. It confirmed its commitment to continue the process of creating a more open and transparent Community.

In the area of public access to information, it invited the Council and the Commission to continue their work

based on the principle of the citizens having the fullest possible access to information. The aim should be to have all necessary measures in place by the end of 1993.

The European Council invited the European Parliament and the Council to settle the last outstanding issues with regard to the establishment of the Ombudsman in time for the entry into force of the Maastricht Treaty.

VI.

**Interinstitutional Agreement between the European Parliament,
the Council and the Commission
on democracy, transparency and subsidiarity
(25 October 1993)**

Bulletin of the European Communities, No 10-1993, pp. 118 and 119

2. Interinstitutional declaration on democracy, transparency and subsidiarity (25 October 1993)

2.2.1. At the Interinstitutional Conference in Luxembourg on 25 October the Council, Parliament and the Commission adopted the following declaration.

1. The European Parliament, the Council and the Commission, as institutions of the European Union, will, within the framework of the legislative procedure, respect in full the democratic principles on which the systems of government of the Member States are based; they reaffirm their attachment to the implementation of transparency by the institutions.

2. As soon as Parliament has adopted its resolution on the annual legislative programme proposed by the Commission, the Council will state its position on the programme in a declaration and undertake to implement as soon as possible the provisions to which it attaches priority, on the basis of formal Commission proposals and in compliance with the procedures laid down by the Treaties.

3. In order to increase the transparency of the Community, the institutions recall the measures which they have already taken in this direction:

The European Parliament, in amending its Rules of Procedure on 15 September 1993, has confirmed the public nature of meetings of its committees and of its plenary sittings.

The Council has agreed to take steps:

- to open some of its debates to the public;
- to publish records and explanations of its voting;
- to publish the common positions which it adopts under the procedures laid down in Articles 189b and 189c, and the statement of reasons accompanying them;
- to improve information for the press and the public on its work and decisions;
- to improve general information on its role and activities;

- to simplify and consolidate Community legislation in cooperation with the other institutions;
- to provide access to its archives.

The Commission has already taken or is in the process of taking the following measures:

- wider consultations before presenting proposals, in particular publication of Green or White Papers on the topics listed in the 1993 legislative programme;
- flagging in the legislative programme of upcoming proposals which would appear to be suitable for wide-ranging preliminary consultations;
- introduction of a notification procedure, consisting of the publication in the Official Journal of a brief summary of any measure planned by the Commission, with the setting of a deadline by which interested parties may submit their comments;
- publication of work programmes and legislative programmes in the Official Journal to publicize action planned by the Commission;
- finalization of the work programme by October with a view to enhancing openness;
- publication in the legislative programme of plans for the consolidation of Community legislation;
- provision of easier public access to documents held by the Commission with effect from 1 January 1994;
- improving knowledge of existing databases and their accessibility, including improving the existing relay network;
- publication each week in the Official Journal of lists of documents on general topics; wider public access to documents on specific topics;

- preparation of an interinstitutional yearbook giving details of each institution's organization chart;
 - faster publication of Commission documents in all Community languages;
 - adoption of a new information and communication policy occupying a larger place in Commission activities; enhanced coordination of information activities both inside and outside the Commission;
 - adoption of additional measures to facilitate the general public's understanding of Commission business, in particular by making available the necessary resources and equipment to provide a suitable response to requests from the media;
 - improvement in the treatment of telephone, mail and personal contacts between citizens and the Commission;
 - promotion of the establishment of self-regulation by special interest groups by asking them to draft a code of conduct and a directory;
 - creation by the Commission of a database on special interest groups as an instrument for use by the general public and by Community officials.
4. Interinstitutional Agreement on procedures for implementing the principle of subsidiarity (→ point 2.2.2).
 5. Draft Decision of the European Parliament laying down the regulations and general conditions governing the performance of the ombudsman's duties.
 6. Arrangements for the proceedings of the Conciliation Committee under Article 189b (→ point 2.2.3).
 7. The three institutions will adopt all these texts in accordance with their internal procedures.

The agreements established at the Interinstitutional Conference on 25 October 1993 are aimed at implementing the Treaty on European Union and at strengthening the democratic, transparent nature of the European Union. They may be added to or amended by common agreement at the initiative of any of the three institutions.

Interinstitutional Agreement between the European Parliament, the Council and the Commission on procedures for implementing the principle of subsidiarity

2.2.2. The European Parliament, the Council and the Commission,

Having regard to the Treaty on European Union signed in Maastricht on 7 February 1992, and in particular Article B thereof,

Having regard to the Treaty establishing the European Community, and in particular Article 3b thereof, as resulting from the Treaty on European Union,

Having regard to the conclusions of the European Council, meeting in Edinburgh, concerning subsidiarity, transparency and democracy,

Have agreed on the following measures:

General provisions

- The purpose of the procedures for implementing the principle of subsidiarity shall be to govern the manner in which the powers assigned to the Community institutions by the Treaties, in order to enable them to achieve the objectives laid down by the Treaties, are exercised.
- Such procedures shall not call into question the *acquis communautaire*, the provisions of the Treaties concerning the powers conferred on the institutions or the institutional balance.

Procedures

- In exercising its right of initiative, the Commission shall take into account the principle of subsidiarity and show that it has been observed. The European Parliament and the Council shall do likewise, in exercising the powers conferred on them by Articles 138b and 152 respectively of the Treaty establishing the European Community.
- The explanatory memorandum for any Commission proposal shall include a justification of the proposal under the principle of subsidiarity.
- Any amendment which may be made to the Commission's text, whether by the European Parliament or the Council, must, if it entails more extensive or intensive intervention by the Community, be accompanied by a justification under the principle of subsidiarity and Article 3b.

VII.

**Council Decision
of 6 December 1993
adopting the Council's Rules of Procedure**

OJ No L 304, 10 December 1993, pp. 1-8

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 6 December 1993

adopting the Council's Rules of Procedure

(93/662/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 151 (3) thereof,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 30 (3) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 121 (3) thereof,

HAS DECIDED AS FOLLOWS:

Sole Article

The Rules of Procedure of the Council of 24 July 1979, as amended on 20 July 1987, shall be replaced by the following, which shall enter into force on 7 December 1993:

'RULES OF PROCEDURE OF THE COUNCIL

Article 1

1. The Council shall meet when convened by its President on his own initiative or at the request of one of its members or of the Commission.

2. The President shall make known the dates which he envisages for meetings of the Council during his period of office as President, seven months before the beginning thereof.

3. In accordance with the Decision taken by common agreement between the Representatives of the Governments of the Member States on 12 December 1992 on the basis of the relevant Articles of the Treaties establishing the European Communities, the Council shall have its seat in Brussels. During the months of April, June and October, the Council shall hold its meetings in Luxembourg.

In exceptional circumstances and for duly substantiated reasons, the Council, acting unanimously, may decide to hold a meeting elsewhere.

Article 2

1. The President shall draw up the provisional agenda for each meeting. The agenda shall be sent to the other members of the Council and to the Commission at least 14 days before the beginning of the meeting.

2. The provisional agenda shall contain the items in respect of which a request for inclusion on the agenda, together with any documents relating thereto, has been received by the General Secretariat from a member of the Council or from the Commission at least 16 days before the beginning of that meeting.

The provisional agenda shall also indicate the items on which the Presidency, a member of the Council or the Commission may request a vote.

3. Only items in respect of which the documents have been sent to the members of the Council and to the Commission at the latest by the date on which the provisional agenda is sent may be placed on that agenda.

4. The General Secretariat shall transmit to the members of the Council and to the Commission requests for the inclusion of items in the agenda, documents and indications concerning voting relating thereto in respect of which the time limits specified above were not respected.

5. The agenda shall be adopted by the Council at the beginning of each meeting. The inclusion in the agenda of an item other than those appearing on the provisional agenda shall require unanimity in the Council. Items entered in this way may be put to the vote.

6. The provisional agenda shall be divided into Part A and Part B. Items for which approval of the Council is possible without discussion shall be included in Part A, but this does not exclude the possibility of any member of the Council or of the Commission expressing an opinion at the time of the approval of these items and having statements included in the minutes.

7. However, an "A" item shall be withdrawn from the agenda, unless the Council decides otherwise, if a position on an "A" item might lead to further discussion thereof or if a member of the Council or the Commission so requests.

Article 3

Subject to the provisions of Article 7 on the delegation of voting rights, a member of the Council who is prevented from attending a meeting may arrange to be represented.

Article 4

1. Meetings of the Council shall not be public except in the cases referred to in Article 6.

2. The Commission shall be invited to take part in meetings of the Council. The Council may, however, decide to deliberate without the presence of the Commission.

3. The members of the Council and of the Commission may be accompanied by officials who assist them. The number of such officials may be laid down by the Council.

The names and functions of such officials shall be notified in advance to the Secretary-General.

4. Admission to meetings of the Council shall be subject to the production of a pass.

Article 5

1. Without prejudice to Article 7 (5) and other applicable provisions, the deliberations of the Council shall be covered by the obligation of professional secrecy, except in so far as the Council decides otherwise.

Where the record of a vote in Council is made public in accordance with Article 7 (5), the explanations of vote 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.

2. The Council may authorize the production of a copy or an extract from its minutes for use in legal proceedings.

Article 6

1. The Council shall hold policy debates on the six-monthly work programme submitted by the Presidency and, if appropriate, on the Commission's annual work programme. These debates shall be the subject of public retransmission by audiovisual means.

2. The Council may decide unanimously and on a case-by-case basis that some of its other debates are to be the subject retransmission by audiovisual means, in particular where they concern an important issue affecting the interests of the Union or an important new legislative proposal. To that end, it shall be for the Presidency, any member of the Council, or the Commission to propose issues or specific subjects for such a debate.

Article 7

1. The Council shall vote on the initiative of its President.

The President shall, furthermore, be required to open a voting procedure on the initiative of a member of the Council or of the Commission, provided that a majority of the Council's members so decides.

2. The members of the Council shall vote in the order of the Member States laid down in Article 27 of the Treaty establishing the European Coal and Steel Community (ECSC), Article 146 of the Treaty establishing the European Community (EC) and Article 116 of the Treaty establishing the European Atomic Energy Community (EAEC), beginning with the member who, according to that order, follows the member holding the office of President.

3. Delegation of the right to vote may only be made to another member of the Council.

4. The presence of six members of the Council is required to enable the Council to vote.

5. The record of the votes shall be made public :

- when the Council is acting as legislator within the meaning of the term given in the Annex to these Rules of Procedure, unless the Council decides otherwise. This rule shall apply when the Council adopts a common position pursuant to Article 189b or 189c of the Treaty establishing the European Community,
- when they are cast by the members of the Council or their representatives on the Conciliation Committee set up by Article 189b of the Treaty establishing the European Community,
- when the Council acts pursuant to Titles V and VI of the Treaty on European Union by a unanimous Council decision taken at the request of one of its members,
- in other cases, by Council decision taken at the request of one of its members.

Article 8

1. Acts of the Council on an urgent matter may be adopted by a written vote where the Council or the Committee of Permanent Representatives of the Member States (Coreper) referred to in Article 30 of the ECSC Treaty, Article 151 of the EC Treaty and Article 121 of the EAEC Treaty, unanimously decides to use that procedure. In special circumstances, the President may also propose the use of that procedure ; in such a case, written votes may be used where all members of the Council agree to that procedure.

2. Furthermore, agreement by the Commission to the use of that procedure shall be required where the written vote is on a matter which the Commission has brought before the Council.

3. A summary of acts adopted by the written procedure shall be drawn up every month.

4. On the initiative of the Presidency, the Council may also act for the purpose of implementing the common foreign and security policy by means of the simplified written procedure (Coreu). In that case the proposal shall be deemed to be adopted at the end of the period laid down by the Presidency depending on the urgency of the matter, except where a member of the Council objects.

5. The General Secretariat shall establish that the written procedures have been completed.

Article 9

1. Minutes of each meeting shall be drawn up and, when approved, shall be signed by the President-in-Office at the time of such approval and by the Secretary-General.

The minutes shall as a general rule indicate in respect of each item on the agenda :

- the documents submitted to the Council,
- the decisions taken or the conclusions reached by the Council,
- the statements made by the Council and those whose entry has been requested by a member of the Council or the Commission.

2. The draft minutes shall be drawn up by the General Secretariat within 15 days and submitted to the Council for approval.

3. Prior to such approval any member of the Council, or the Commission, may request that more details be inserted in the minutes regarding any item on the agenda.

4. The texts referred to in Article 10 shall be annexed to the minutes.

Article 10

1. Except as otherwise decided unanimously by the Council on grounds of urgency, the Council shall deliberate and take decisions only on the basis of documents and drafts drawn up in the languages specified in the rules in force governing languages.

2. Any member of the Council may oppose discussion if the texts of any proposed amendments are not drawn up in such of the languages referred to in paragraph 1 as he may specify.

Article 11

The text of the acts adopted by the Council and that of the acts adopted jointly by the European Parliament and the Council shall be signed by the President-in-Office at the time of their adoption and by the Secretary-General. The Secretary-General may delegate his signature to Directors-General of the General Secretariat.

Article 12

Regulations adopted jointly by the European Parliament and the Council as well as Council regulations shall include in their title the word "Regulation", as followed by a serial number, by the date of their adoption and by an indication of their subject matter.

Article 13

Regulations adopted jointly by the European Parliament and the Council as well as Council regulations shall contain the following :

- (a) "The European Parliament and the Council of the European Union" or "The Council of the European Union" as appropriate ;

- (b) a reference to the provisions under which the Regulation is adopted, preceded by the words "Having regard to";
- (c) a citation containing a reference to proposals submitted and opinions obtained and to consultations held;
- (d) a statement of the reasons on which the Regulation is based, introduced by the word "Whereas";
- (e) the phrase "have adopted this Regulation" or the phrase "has adopted this Regulation", as appropriate, followed by the body of the Regulation.

Article 14

1. Regulations shall be divided into Articles, if appropriate grouped into chapters and sections.

2. The last Article of a Regulation shall fix the date of entry into force, where that date is before or after the 20th day following publication.

3. The last Article of a Regulation shall be followed by:

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

— "Done at ...", followed by the date on which the Regulation was adopted, and

— in the case of:

(a) a Regulation adopted jointly by the European Parliament and the Council, the formula:

"For the European Parliament The President"	"For the Council The President",
--	-------------------------------------

followed by the name of the President of the European Parliament and of the President-in-Office of the Council when the Regulation is adopted;

(b) a Council Regulation, the following formula:

"For the Council
The President",

followed by the name of the President-in-Office of the Council at the time when the Regulation is adopted.

Article 15

The acts referred to in Article 191 (1) of the EC Treaty and the acts of the Council referred to in Article 191 (2) thereof and in the first paragraph of Article 163 of the EAEC Treaty shall be published in the Official Journal by the Secretary-General. Common positions adopted by the Council in accordance with the procedures referred to in Articles 189b and 189c of the EC Treaty, and the

reasons underlying those common positions, shall be published under the same conditions.

Article 16

Directives and decisions adopted jointly by the European Parliament and the Council, and directives and decisions of the Council, shall include in their titles the word "Directive" or "Decision".

Recommendations made and opinions delivered by the Council shall include in their titles the word 'recommendation' or 'opinion'.

The provisions relating to Regulations set out in Articles 13 and 14 shall apply *mutatis mutandis*, subject to the relevant provisions of the Treaty, to directives and decisions.

Article 17

1. Common positions within the meaning of Article J.2 and joint action within the meaning of Article J.3 of the Treaty on European Union shall bear one of the following headings, as appropriate:

— "Common position defined by the Council on the basis of Article J.2 of the Treaty on European Union";

— "Joint action adopted by the Council on the basis of Article J.3 of the Treaty on European Union".

2. Joint positions, joint action and conventions within the meaning of Article K.3 (2) of the Treaty on European Union shall bear one of the following headings, as appropriate:

— "Joint position defined by the Council on the basis of Article K.3 of the Treaty on European Union",

— "Joint action adopted by the Council on the basis of Article K.3 of the Treaty on European Union",

— "Convention drawn up on the basis of Article K.3 of the Treaty on European Union".

Article 18

1. The Secretary-General shall notify Council directives other than those referred to in Article 191 (2) of the EC Treaty and Council decisions and recommendations to their addressees. He shall also notify the joint action adopted or the common positions or joint positions defined on the basis of Articles J.2, J.3 or K.3 of the Treaty on European Union. He may entrust to Directors-General of the General Secretariat the task of attending to such notification on his behalf.

2. The Secretary-General or a Director-General acting on his behalf shall send authentic copies of Council Directives other than those referred to in Article 191 (2) of the EC Treaty and Council decisions and recommendations to the Governments of the Member States and to the Commission.

3. The decision to publish in the Official Journal the common positions and joint positions defined and the joint action adopted on the basis of Articles J.2, J.3 and K.3 of the Treaty on European Union and the measures implementing joint action and any measures implementing the conventions referred to in paragraph 4 shall in each case be taken by the Council acting unanimously when the said instruments are adopted.

4. Conventions drawn up by the Council in accordance with Article K.3 (2) of the Treaty on European Union, shall be published in the Official Journal.

Reference shall be made in the Official Journal to the entry into force of such conventions.

5. The Council shall decide unanimously whether the following should be published in the Official Journal by the Secretary-General :

- directives other than those referred to in Article 191 (1) and (2) of the EC Treaty, Council decisions and recommendations,
- conventions signed between the Member States.

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

Article 19⁽¹⁾

1. The Permanent Representatives Committee (Coreper) shall prepare the work of the Council and shall carry out the tasks assigned to it by the Council. All items on the agenda for a Council meeting shall be examined in advance by Coreper unless the Council decides otherwise. Coreper shall endeavour to reach agreement at its level to be submitted to the Council for adoption. It shall ensure adequate presentation of the dossiers to the Council. In the event of an emergency, the Council, acting unanimously, may decide to settle the matter without prior examination.

2. Committees or working parties may be set up by, or with the approval of, Coreper with a view to carrying out certain preparatory work or studies defined in advance.

⁽¹⁾ These provisions are without prejudice to the role of the Monetary Committee as resulting from Article 109c of the EC Treaty and existing Council decisions relating to it.

3. Coreper shall be presided over, depending on the items on the agenda, by the Permanent Representative or the Deputy Permanent Representative of the Member State which holds the Presidency of the Council. Unless the Council decides otherwise, the various committees provided for in the Treaties shall also be presided over by a delegate of that Member State. The same shall apply to the committees and working parties referred to in paragraph 2, unless Coreper decides otherwise. For the preparation of meetings of Council compositions meeting once every six months and held during the first half of this period, the meetings of committees other than Coreper, and those of working parties held during the preceding six months may be chaired by a delegate of the Member State whose turn it is to chair the said Council meetings.

Article 20⁽¹⁾

Notwithstanding the other provisions of these Rules of Procedure, the Presidency shall organize the meetings of the various committees and working parties so that their reports are available before the Coreper meetings at which they are to be examined.

Article 21

1. The Council shall be assisted by a General Secretariat under the direction of a Secretary-General. The Secretary-General shall be appointed by the Council acting unanimously.

2. The Council shall determine the organization of the General Secretariat.

Under its authority the Secretary-General shall take all the measures necessary to ensure the smooth running of the General Secretariat.

3. The Secretary-General shall submit to the Council the draft estimate of the expenditure of the Council in sufficient time to ensure that the time limits laid down by the financial provisions are met.

4. In accordance with the provisions of the Financial Regulation referred to in Article 78h of the ECSC Treaty, in Article 209 of the EC Treaty and in Article 183 of the EAEC Treaty, the Secretary-General shall administer the funds placed at the disposal of the Council.

Article 22

The detailed arrangements for public access to Council documents disclosure of which is without serious or prejudicial consequences shall be adopted by the Council.

Article 23

The rules on security shall be adopted by the Council.

Article 24

In the event of the Secretary-General of the Council being designated as depositary of an agreement concluded between the Community and one or more States or international organizations, of a convention concluded between Member States or of a convention drawn up pursuant to Article K.3 of the Treaty on European Union, the acts of ratification, acceptance or approval of those agreements or conventions shall be deposited at the address of the Council.

In such instances the Secretary-General shall perform all the duties of a depositary of a treaty and shall also ensure that the dates of entry into force of such agreements or conventions are published in the Official Journal.

Article 25

1. Subject to special procedures, the Council may be represented by the Presidency or by any other of its

members before the European Parliament or its committees. The Council may also be represented before those committees by its Secretary-General or by senior officials of the General Secretariat acting on instructions from the Presidency.

2. The Council may also present its views to the European Parliament by means of a written statement.

Article 26

Correspondence to the Council shall be sent to the President at the address of the Council.'

Done at Brussels, 6 December 1993.

For the Council

The President

W. CLAES

ANNEX

The Council acts as legislator within the meaning of the first indent of Article 7 (5) when it adopts rules which are legally binding in or for the Member States whether by means of regulations, directives or decisions, on the basis of the relevant provisions of the Treaties, in particular on the basis of Article 43 of the Treaty establishing the European Community or in the framework of the procedures in Article 189b and Article 189c of that Treaty, with the exception of discussions leading to the adoption of internal measures, administrative or budgetary acts, acts concerning inter-institutional or international relations or non-binding acts such as conclusions, recommendations or resolutions. Votes shall not be made public in the case of discussions leading to indicative votes or the adoption of preparatory acts.

Statements for the Council minutes**(a) *Re Article 2 (1) and (2)***

'The President will endeavour to ensure that, in principle, the provisional agenda for each Council meeting devoted to implementation of the provisions of Title VI of the Treaty on European Union, and the documentation relating to the items on that agenda, are received by the members of the Council at least 21 days before the beginning of the meeting'.

(b) *Re Article 2*

'The Council is aware that common foreign and security policy matters must be dealt with quickly and effectively; taking into account existing practice, which the Council undertakes to continue to follow, the rules under Article 2 do not prevent that requirement being met'.

(c) *Re Article 6 (1)*

'Policy debates on the six-monthly work programme submitted by the Presidency and, if appropriate, on the Commission's work programme will be held in the General Affairs Council and the Economic and Financial Affairs Council. It is for the Presidency to set the timetable'.

(d) *Re Article 6 (2)*

'It is for Coreper to prepare any debates which might be the subject of public retransmission'.

(e) *Re Article 8*

'The Council agrees to consider the desirability of introducing into the Rules of Procedure provision for the use of a simplified written procedure where the Council acts under Title VI of the Treaty on European Union'.

(f) *Re Articles 13 and 16*

'The Council notes the undertaking given by the Commission in the Presidency conclusions of the Edinburgh European Council to justify in a recital in each of its proposals the relevance of the proposal with regard to the principle of subsidiarity'.

(g) *Re Article 15*

'The reasons underlying common positions will be submitted to Coreper and the Council before being published'.

(h) *Re Article 20*

'Working party reports and other documents serving as a basis for Coreper's proceedings should be sent to the Member States in time for them to be examined'.

VIII.

**Code of Conduct
concerning public access to documents,
approved by the Council and the Commission
on 6 December 1993**

OJ No L 340, 31 December 1993, pp. 41 and 42

II

(Acts whose publication is not obligatory)

COUNCIL

CODE OF CONDUCT CONCERNING PUBLIC ACCESS TO COUNCIL AND
COMMISSION DOCUMENTS

(93/730/EC)

THE COUNCIL AND THE COMMISSION,

HAVING REGARD to the declaration on the right of access to information annexed to the final act of the Treaty on European Union, which emphasizes that transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration,

HAVING REGARD to the conclusions wherein the European Councils in Birmingham and Edinburgh agreed on a number of principles to promote a Community closer to its citizens,

HAVING REGARD to the conclusions of the European Council in Copenhagen, reaffirming the principle of giving citizens the greatest possible access to information and calling on the Council and the Commission to adopt at an early date the necessary measures for putting this principle into practice,

CONSIDERING it desirable to establish by common agreement the principles which will govern access to Commission and Council documents, it being understood that it is for each of them to implement these principles by means of specific regulations,

WHEREAS the said principles are without prejudice to the relevant provisions on access to files directly concerning persons with a specific interest in them;

WHEREAS these principles will have to be implemented in full compliance with the provisions concerning classified information;

WHEREAS this code of conduct is an additional element in their information and communication policy,

HAVE AGREED AS FOLLOWS:

General principle

The public will have the widest possible access to documents held by the Commission and the Council.

'Document' means any written text, whatever its medium, which contains existing data and is held by the Council or the Commission.

have to contain information that will enable the document or documents concerned to be identified.

Where necessary, the institution concerned will ask the applicant for further details.

Processing of initial applications

An application for access to a document will have to be made in writing, in a sufficiently precise manner; it will

Where the document held by an institution was written by a natural or legal person, a Member State, another Community institution or body or any other national or international body, the application must be sent direct to the author.

In consultation with the applicants, the institution concerned will find a fair solution to comply with repeat applications and/or those which relate to very large documents.

The applicant will have access to documents either by consulting them on the spot or by having a copy sent at his own expense; the fee will not exceed a reasonable sum.

The institution concerned will be able to stipulate that a person to whom a document is released will not be allowed to reproduce or circulate the said document for commercial purposes through direct sale without its prior authorization.

Within one month the relevant departments of the institution concerned will inform the applicant either that his application has been approved or that they intend to advise the institution to reject it.

Processing of confirmatory applications

Where the relevant departments of the institution concerned intend to advise the institution to reject an application, they will inform the applicant thereof and tell him that he has one month to make a confirmatory application to the institution for that position to be reconsidered, failing which he will be deemed to have withdrawn his original application.

If a confirmatory application is submitted, and if the institution concerned decides to refuse to release the document, that decision, which must be made within a month of submission of the confirmatory application, will be notified in writing to the applicant as soon as possible. The grounds for the decision must be given, and the decision must indicate the means of redress that are available, i.e. judicial proceedings and complaints to the ombudsman under the conditions specified in,

respectively, Articles 173 and 138e of the Treaty establishing the European Community.

Exceptions

The institutions will refuse access to any document whose disclosure could undermine:

- the protection of the public interest (public security, international relations, monetary stability, court proceedings, inspections and investigations),
- the protection of the individual and of privacy,
- the protection of commercial and industrial secrecy,
- the protection of the Community's financial interests,
- the protection of confidentiality as requested by the natural or legal persons that supplied the information or as required by the legislation of the Member State that supplied the information.

They may also refuse access in order to protect the institution's interest in the confidentiality of its proceedings.

Implementation

The Commission and the Council will severally take steps to implement these principles before 1 January 1994.

Review

The Council and the Commission agree that the code of conduct will, after two years of operation, be reviewed on the basis of reports drawn up by the Secretaries-General of the Council and the Commission.

Council statement

This code of conduct and the decisions which the Council and the Commission will severally adopt on the basis thereof are intended to allow public access to Council and Commission documents.

They alter neither the existing practices nor the obligations of Member States' Governments toward their parliaments.

IX.

**Council Decision
on public access to Council
documents (20 December 1993)**

OJ No L 340, 31 December 1993, pp. 43 and 44

COUNCIL DECISION

of 20 December 1993

on public access to Council documents

(93/731/EC)

THE COUNCIL,

Having regard to the Treaty establishing the European Community, and in particular Article 151 (3) thereof,

Having regard to its Rules of Procedure, and in particular Article 22 thereof,

Whereas on 6 December 1993 the Council and the Commission approved a code of conduct concerning public access to Council and Commission documents, reaching common agreement on the principles which must govern such access;

Whereas provisions should be adopted for the implementation of those principles by the Council;

Whereas these provisions are applicable to any document held by the Council, whatever its medium, excluding documents written by a person, body or institution outside the Council;

Whereas the principle of allowing the public wide access to Council documents, as part of greater transparency in the Council's work, must however be subject to exceptions, particularly as regards protection of the public interest, the individual and privacy;

Whereas, in the interests of rationalization and efficiency, the Secretary-General of the Council should sign on behalf of the Council and on its authorization replies to applications for access to documents, except in cases where the Council is called upon to reply to a confirmatory application;

Whereas this Decision must apply with due regard for provisions governing the protection of classified information,

HAS DECIDED AS FOLLOWS:

Article 1

1. The public shall have access to Council documents under the conditions laid down in this Decision.
2. 'Council document' means any written text, whatever its medium, containing existing data and held by the Council, subject to Article 2 (2).

Article 2

1. An application for access to a Council document shall be sent in writing to the Council⁽¹⁾. It must be made in a sufficiently precise manner and must contain information enabling the document or documents requested to be identified. Where necessary, the applicant shall be asked for further details.

2. Where the requested document was written by a natural or legal person, a Member State, another Community institution or body, or any other national or international body, the application must not be sent to the Council, but direct to the author.

Article 3

1. The applicant shall have access to a Council document either by consulting it on the spot or by having a copy sent at his own expense. The fee shall be set by the Secretary-General.

2. The relevant departments of the General Secretariat shall endeavour to find a fair solution to deal with repeat applications and/or those which relate to very large documents.

3. Anyone given access to a Council document may not reproduce or circulate the document for commercial purposes through direct sale without prior authorization from the Secretary-General.

Article 4

1. Access to a Council document shall not be granted where its disclosure could undermine:

- the protection of the public interest (public security, international relations, monetary stability, court proceedings, inspections and investigations),
- the protection of the individual and of privacy,
- the protection of commercial and industrial secrecy,
- the protection of the Community's financial interests,

⁽¹⁾ The Secretary-General of the Council of the European Union, 175 rue de la Loi, 1048 Brussels, Belgium.

— the protection of confidentiality as requested by the natural or legal person who supplied any of the information contained in the document or as required by the legislation of the Member State which supplied any of that information.

2. Access to a Council document may be refused in order to protect the confidentiality of the Council's proceedings.

Article 5

The Secretary-General shall reply on behalf of the Council to applications for access to Council documents, except in the cases referred to in Article 7 (3), in which the reply shall come from the Council.

Article 6

Any application for access to a Council document shall be examined by the relevant departments of the General Secretariat, which shall suggest what action is to be taken on it.

Article 7

1. The applicant shall be informed in writing within a month by the relevant departments of the General Secretariat either that his application has been approved or that the intention is to reject it. In the latter case, the applicant shall also be informed of the reasons for this intention and that he has one month to make a confirmatory application for that position to be reconsidered, failing which he will be deemed to have withdrawn his original application.

2. Failure to reply to an application within a month of submission shall be equivalent to a refusal, except where the applicant makes a confirmatory application, as referred to above, within the following month.

3. Any decision to reject a confirmatory application, which shall be taken within a month of submission of such application, shall state the grounds on which it is based. The applicant shall be notified of the decision in writing as soon as possible and at the same time informed of the content of Articles 138e and 173 of the Treaty establishing the European Community, relating respectively to the conditions for referral to the Ombudsman by natural persons and review by the Court of Justice of the legality of Council acts.

4. Failure to reply within a month of submission of the confirmatory application shall be equivalent to a refusal.

Article 8

This Decision shall apply with due regard for provisions governing the protection of classified information.

Article 9

This Decision shall be reviewed after two years of operation. In 1996 the Secretary-General shall submit a report on the implementation of this Decision in 1994 and 1995, in preparation for that review.

Article 10

This Decision shall take effect on 1 January 1994.

Done at Brussels, 20 December 1993.

For the Council
The President
W. CLAES

X.

**Council conclusions
on transparency
approved on 29 May 1995**

7481/95 (Presse 152), pp. 4 and 5

TRANSPARENCY OF COUNCIL PROCEEDINGS

The Council examined in detail the Danish Government's note and the suggestions by the Swedish authorities.

The Council reaffirms its determination to work towards greater transparency of its proceedings within the guidelines framed by the European Council, while maintaining the effectiveness of the decision-making process.

1. The outcome of votes on legislative acts is now made public as a matter of course. The Council has never used the possibility of an exception provided for in its Rules of Procedure, nor does it intend doing so in the future.
2. The Council will hold more frequent debates which are broadcast to the public ("open debates") on important matters affecting the interests of the Union or on major new legislative proposals. The Presidency proposes that such debates be held at the start of each half year. For June 1995 the Presidency will be proposing at least two debates. The Presidency proposals for the second half of the year will be announced in July.
3. The Council will ensure that the press and the public are regularly and fully briefed prior to each of its meetings. To that end the General Secretariat of the Council will circulate, where necessary in liaison with the Presidency, all the relevant background information relating to the texts under discussion.
4. The Council instructs Coreper to consider the conditions under which public access to minutes of Council meetings could be facilitated.

For this purpose, the Council instructs Coreper to look into the establishment of a procedure which would make it possible, when each set of minutes is adopted, to determine whether the information contained in them, as described in Article 9(1) of the Council's Rules of Procedure, can be made accessible to the public and under what conditions. It also instructs Coreper to continue examining the practice of statements in the minutes in order to work out how to make better use of such statements and thereby to facilitate public access to minutes. Coreper is to report back to the Council by 1 October 1995.

XI.

**Code of Conduct
on public access to the minutes
and statements in the minutes of the Council
acting as legislator
(2 October 1995)**

10204/95 (Presse 271), pp. 15-18

13. TRANSPARENCY OF COUNCIL PROCEEDINGS

- **Code of Conduct on public access to the minutes and statements in the minutes of the Council acting as legislator, adopted by the Council:**

"This Code of Conduct concerns items in the Council minutes relating to the final adoption of legislative acts within the meaning assigned to that term in the Annex to the Council's Rules of Procedure and the statements thereon.

A. Statements

1. The Council agrees to use statements in the minutes sparingly, it being understood that this instrument must continue to contribute to the efficiency of the decision-making process.
2. To that end, the Council bodies will endeavour, wherever appropriate, to incorporate the content of projected statements in the legislative act itself (recital or enacting terms), or in the statement of reasons in the case of a common position within the meaning of Articles 189b and 189c of the EC Treaty.

Some statements by members of the Council could become explanations of vote as referred to in the second subparagraph of Article 5(1) of the Council's Rules of Procedure.

3. If the Council, the Commission and/or the members of the Council deem it advisable to make statements, those statements should observe the requirement of compatibility with the text of the act.
4. The Council is in favour of public access, in general, to statements which it enters in its minutes when adopting legislative acts. When adopting such acts, the Council will therefore decide, in principle, that these statements are not covered by the obligation of professional secrecy, save in cases where, at the request of one of its members, the Council establishes that it does not have the simple majority required by Article 5(1) of its Rules of Procedure to waive that obligation.

In the case of a statement by one or more members of the Council, the Council will seek the agreement of the author(s) of the statement before deciding to make it available to the public.

Where a member of the Council requests that one of his statements be made available to the public by the Council, the Council will endeavour to comply with that request, on the understanding that each member of the Council may make his own statements public, acting on his own responsibility.

B. Minutes

1. When adopting the minutes of its meetings, the Council will systematically examine the question of whether to make public the references to documents before the Council ⁽¹⁾ and the decisions taken or conclusions reached by the Council which are contained in the minutes relating to the final adoption of its legislative acts. As regards statements in the minutes, the decision taken by the Council when adopting the legislation will determine whether they can be made available to the public, without prejudice to application of the Council Decision of 20 December 1993 on public access to Council documents.
2. The Council's aim in making this examination will be to reach decisions which ensure the widest possible public availability of its minutes, save in exceptional cases where one of the reasons referred to in Article 4(1) of the Council Decision of 20 December 1993 on public access to Council documents does not so permit.
3. Where minutes contain statements by one or more members of the Council, the Council will seek the agreement of the author(s) of the statement(s) before taking a decision.
4. The Council shall take decisions on whether to make its minutes public on the basis of suggestions made by Coreper acting on a report from the Antici Group or the Mertens Group, as appropriate.
5. This Code of Conduct does not apply to items in minutes of Council meetings held prior to the date of its adoption."

⁽¹⁾ The decision to make minutes public does not mean that the documents referred to therein will be available to the public.

XII.

**Decision of the Secretary-General of the Council
relating to fees
in the context of public access
to Council documents
(27 February 1996)**

OJ No C 74, 14 March 1996, p. 3

DECISION OF THE SECRETARY-GENERAL OF THE COUNCIL
of 27 February 1996
relating to fees in the context of public access to Council documents
(96/C 74/02)

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

Having regard to Council Decision 93/731/EC of 20 December 1993 on public access to Council documents, and in particular Article 3 (1) thereof,

Whereas applicants may have access to a Council document either by consulting it on the spot or by having a copy sent at their expense;

Whereas a fee should be set for copies of documents requested in the context of public access to Council documents, in order to cover administrative costs,

HAS DECIDED AS FOLLOWS:

Article 1

In the context of the Council Decision of 20 December 1993 on public access to Council documents, a fee of ECU 10 plus ECU 0,036 per sheet of paper shall be charged by the General Secretariat of the Council for copies of printed documents exceeding 30 pages. Charges for information in other formats shall be set on a case-by-case basis but shall not exceed what is reasonable.

Article 2

This Decision shall take effect one month after its publication in the *Official Journal of the European Communities*. It shall apply only to requests for public access to Council documents received after that date.

Done at Brussels, 27 February 1996.

Jürgen TRUMPF
Secretary-General
of the Council of the European Union

XIII.

**First report on the implementation
of Council Decision 93/731/EC
on public access to Council documents
(July 1996)**

8330/96

INTRODUCTION

Article 9 of Council Decision 93/731/EC of 20 December 1993 on public access to Council documents ⁽¹⁾ stipulates that it will be reviewed after two years of operation. With a view to that re-examination the Secretary-General must, in 1996, submit a report on the implementation of the Decision in 1994 and 1995.

The aim of this report, drawn up under the responsibility of the Secretary-General, is to:

- review the policy of public access to Council documents after two years of implementation;
- provide a brief analysis of the main issues, including disputes before the Court, to which it has given rise.

1. TRANSPARENCY MEASURES

The possibility for the public to have access to unpublished Council documents on the basis of Council Decision 93/731/EC constitutes one of the components of the general policy of openness and transparency outlined in the Birmingham Declaration in October 1992 with a view to bringing Europe closer to its citizens.

⁽¹⁾ OJ No L 340, 31.12.1993, p. 43.

A first step in that development was taken with Declaration No 17 on the right of access to information annexed to the Final Act of the Treaty on European Union. Later, the principle that citizens must have "the fullest possible access to information" was confirmed by the Copenhagen European Council (June 1993).

On 6 December 1993 the Council and the Commission approved a code of conduct concerning public access to their documents ⁽²⁾ in which it is stated that the public will have "the widest possible access to documents held" by these two institutions.

It is true that before the launch of this new official approach to openness and transparency, the flow of information on Community affairs in general and on the Council's discussions in particular was already characterized by the existence of a multitude of sources that were particularly active in that area: Member States, the Commission, the Press and Information Office of the General Secretariat of the Council, etc.

Rather than substantially increase the effective flow of information, the new approach has thus accentuated recognition of the principle that anyone must have the fullest possible access to information, before the entry into force of Decision 93/731/EC on 1 January 1994, there was no mechanism for providing public access to Council documents.

Additional measures to increase the transparency of the Council's proceedings have come into being in the meantime.

Thus, on 2 October 1995, the Council adopted a code of conduct allowing public access to statements in the minutes and the extracts from minutes where the Council has adopted legislative acts. It should be noted that the outcome of votes and any explanations of votes linked to the Council's legislative activity have been made public on a regular basis since December 1993 by virtue of an amendment to the Council's Rules of Procedure introduced at that time.

⁽²⁾ OJ No L 340, 31.12.1993, p. 41.

On 29 May 1995 the Council further reaffirmed its determination to ensure that the press and the public were regularly and fully briefed prior to each of its meetings. To that end, the General Secretariat of the Council has been authorized to circulate, where necessary in liaison with the Presidency, all the relevant background information relating to the texts under discussion.

Open debates (broadcast by audiovisual means) on the Presidency's six-month programme, on general matters affecting the interests of the Union or on major new legislative proposals constitute a further significant attempt to increase the transparency of the Council's proceedings. Similarly, increased efforts have been made in the direction of an active information policy on the Council's proceedings ⁽³⁾.

2. STATISTICAL REPORT ON THE POLICY OF PUBLIC ACCESS TO DOCUMENTS

The procedure laid down in Decision 93/731/EC guarantees the applicant for a Council document a maximum time-limit for a reply, a reasoned examination of the application and the right of appeal before the Council (i.e. at the level of the Ministers themselves, after examination at both expert and Ambassadorial level) where the initial reply drawn up by the General Secretariat of the Council is negative. Finally, in the event of a confirmatory application being rejected, the applicant is informed of the content of Articles 138e and 173 of the Treaty establishing the European Community relating respectively to the conditions for referral to the Ombudsman by natural persons and review by the Court of Justice of the legality of Council acts.

During the period covered by this report a total of 142 applicants (70 in 1994; 72 in 1995) applied for access pursuant to Decision 93/731/EC. The applications covered a total of 443 documents; some applications did not allow identification of specific documents, as applications were too vaguely expressed or referred to texts that did not exist.

⁽³⁾ An Information Policy, Transparency and Public Relations Division has been set up within the General Secretariat of the Council.

2.1. Origins of applicants

(a) occupation:

Members of the EP	7	5%
Lobbyists	13	9%
Lawyers	36	25%
Journalists	33	23%
Academics	38	27%
Industrial sector	3	2%
Others	12	8%

(b) geographical origin:

Germany	21	15%
Belgium ⁽⁴⁾	44	31%
Denmark	5	4%
Spain	3	2%
France	6	4%
Ireland	1	
Italy	6	4%
Luxembourg	3	2%
Netherlands	10	7%
United Kingdom	35	25%
Switzerland	1	
Norway	2	
Sweden	4	3%
Japan	1	

The geographical and occupational breakdown of applicants demonstrates that the policy of public access to documents is little used or unused in some Member States, nor is it widely used in sectors other than journalism, the law and higher education.

⁽⁴⁾ Including organizations based in Belgium.

2.2. Subject of applications:

The breakdown of applications according to the areas covered by the Directorates-General of the General Secretariat of the Council is as follows: ⁽⁵⁾

Legal matters	5	3%
Agriculture	5	3%
Internal Market	25	17%
Energy, transport	5	3%
External Relations	17	11%
Institutional Affairs and Information Policy	28	19%
Economic and Monetary Affairs	6	4%
Justice and Home Affairs	30	20%
Environment	15	10%
Social Policy	12	8%

Sixteen applicants requested documents concerning policy on transparency and information, in particular on the management of public access to documents.

2.3. Follow-up to applications for access

Of the 443 documents requested or identified as such by the General Secretariat, a total of 65 did not fall within the scope of the Decision as the documents were of a public nature or were not produced by the Council. Of the remaining 378, a favourable reply was given for 222 documents, i.e. 58,7%.

⁽⁵⁾ The fact that some applicants submitted applications for documents relating to different areas explains the difference between the number of applicants and the breakdown by subject matter.

It should be noted that the implementation of the policy of document access has developed in the applicants' favour and the number of positive replies is greater now than it was at the beginning.

Among the 222 documents to which access was granted, 185 documents were supplied by the General Secretariat of the Council in the first instance, while access to the other 37 was decided by the Council in response to 16 confirmatory applications made by the applicants.

The General Secretariat's refusal to grant access was confirmed by the Council in respect of 10 confirmatory applications. The Council gave applicants full or partial satisfaction in 6 other cases.

Regarding the 156 other documents to which access was not granted, the reasons for refusal, pursuant to Article 4 of the Decision, were as follows:

- | | |
|--|-----|
| – protection of the public interest (public security, international relations, monetary stability, court proceedings, inspections or investigations) | 18% |
| – protection of the individual and of privacy | 3% |
| – protection of commercial and industrial secrecy | 2% |
| – protection of the Community's financial interests | 1% |
| – protection of the confidentiality of the Council's proceedings | 44% |
| – several reasons simultaneously | 25% |
| – other reasons | 7%. |

3. MAIN FEATURES OF THE POLICY ON ACCESS TO DOCUMENTS

It should be noted that the scope of the policy on access to Council documents is less restrictive than that of the national legislations of most Member States as regards the nature of the documents to which access may be given. Under Decision 93/731/EC, access may be given to all Council documents while most national legislations rule out access to internal administrative documents and reports, such as preparatory documents not leading to a decision being taken. This broad field of application of the Decision is not without creating difficulties.

3.1. Identifying documents

Article 2 of Decision 93/731/EC lays down that applications for access to a Council document must be made in a sufficiently precise manner and must contain information enabling the document or documents requested to be identified.

In practice the Council has been confronted with many very vague or general requests of the kind: "all preparatory discussions on Directive ...", "all texts in connection with the Convention ...", "statistics on qualified majority votes since ...", "all agendas for all Working Parties under Title VI ...", "the amendments to Article ... of a Directive under discussion for many years", etc.

Such requests have sometimes demanded considerable research on the part of the General Secretariat.

While it is true that the Decision provides the option of asking the applicant to make the request more specific, where the applicant does not know what documents are available, this provision did not prove very practical.

In this connection, consideration might be given to the possibility of establishing a register of Council documents.

Also a request for the application to be more specific may not be construed as a refusal within the meaning of Article 7(1) leading to a confirmatory application.

3.2. Applications involving excessive or disproportionate costs

Article 3(2) of Decision 93/731/EC stipulates that the relevant departments of the General Secretariat shall endeavour to find a fair solution to deal with repeat applications and/or those which relate to very large documents.

The Decision makes no provision for any other mechanism to enable the Council to deal with requests that could be considered excessive or that could give rise to disproportionate costs. Moreover, applicants are not required to give reasons for the interest they take in the Council's proceedings. Yet the very nature of certain applications sometimes elicits the thought that steps are being taken to test the system rather than exercise a legitimate option.

For example, during the period in question a single applicant submitted 14 requests involving more than 150 documents, i.e. more than one third of all the documents requested by all the applicants.

It should be noted that the public resources invested to handle applications for access to documents are supplied from the Council's very limited resources in terms of both time and staff.

It might therefore be worth considering whether provision should be made for applications which are manifestly excessive or involve disproportionate costs to be refused, where appropriate, after examination of the reasons for the applicant's interest.

3.3. Application of Article 4 of the Decision

Article 4 of Decision 93/731/EC lays down conditions on the general principle of public access to Council documents.

In practice, application of this article has given rise to two problems in particular involving, on the one hand, documents containing legal positions of the Council Legal Service and, on the other hand, the protection of the Council's proceedings.

- (a) It should be noted that, where documents containing legal positions of the Council Legal Service have been requested, the Council has refused to release them to the public on the grounds that their content fell within the scope of Article 4(1), in particular the protection of the public interest (public security, court proceedings), or was part of the Council's proceedings that the Council deemed it necessary to protect for reasons of confidentiality (Article 4(2) of the Decision).

However, it may prove helpful to supplement Article 4(1) of the Decision by adding the words "legal certainty", as in the second paragraph of Article 5(1) of the Council's Rules of Procedure.

Such an addition is justified on several grounds ⁽⁶⁾.

- (b) On the matter of the protection of the Council's proceedings, it should be noted that sending the initial reply to the applicant is the sole responsibility of the Secretary-General, after examination of the application by the relevant departments of the General Secretariat.

The vast majority of Council documents refer to its proceedings or to the preparatory discussions of its various bodies. For that reason, in doubtful cases where there is a delicate balance of interests, protection of the confidentiality of the proceedings is the reason most often invoked by the General Secretariat for refusing access to a document, leading the applicant to make a confirmatory application so that the Council decides.

This makes the procedure cumbersome since confirmatory applications must be examined by experts ("Working Party on Information"), Ambassadors (Permanent Representatives Committee) and the Council (Ministerial level).

⁽⁶⁾ See the conclusions submitted on 9 March 1995 by Advocate-General Jacobs in case C-350/92 (CR 1995, I-1988, point 35), in which an opinion of the Legal Service was used, without its authorization, against the Council in the course of proceedings before the Court of Justice: *"It seems plain in any event that, in the absence of express authorization by the Council, advice given by the Council's Legal Service should not be invoked in proceedings before the Court. That would obviously be prejudicial to the public interest in the provision of independent legal advice"*.

Thus, documents containing legal positions of the Council Legal Service should not be released to the public, since, if the Council subsequently departed from the position of its Legal Service, any defence of the Council in a dispute would prove difficult precisely since such defence is provided by its Legal Service. Relations between the Legal Service and the Council are similar to those between lawyers or legal advisers and their clients, those relations being confidential. To ensure the independence of the Legal Service as legal adviser to the Council, documents which contain legal positions should not be released to the public.

This situation could be improved, in the interests of both the Council and applicants, if the Secretary-General were authorized by the Council to allow public access to certain categories of documents and/or to those relating to dossiers that were no longer current, after a period to be determined, subject to exceptions especially in the case of foreign policy or combating crime. The Council could thus adopt guidelines for the General Secretariat of the Council on implementing the Decision. These guidelines would not replace the detailed examination of each application in turn, but could constitute a reference framework for the Secretariat enabling a much larger number of applications to be settled at the initial stage.

In any event, solutions should be found to ensure that the confirmatory application constitutes an exception to the rule, with a larger number of applications being dealt with appropriately at the initial stage by the General Secretariat. It has already been stated that the "cost" – in terms of both time and human and material resources – as well as in numerous and extended meetings of the experts, Ambassadors and Ministers concerned by these matters has become excessive.

Moreover, it has been suggested that explicit reference to certain members of the Council should be deleted from the documents so that the public may be given access to a greater number of documents without prejudice to negotiations. This approach has been used on only one occasion and is not approved by all the Member States. The procedure may in fact amount to an amendment to the document in question and in those circumstances it might be preferable not to release it.

3.4. Classified information

Article 8 of the Decision stipulates that public access to documents "shall apply with due regard for provisions governing the protection of classified information".

This provision has not prevented the Council from granting public access to certain "classified" documents ⁽⁷⁾ after weighing the interests concerned and declassifying the documents in question. In other cases, the decision was taken not to declassify and the confidential nature of the document was given as the reason for refusal.

It should be noted that the level of classification of a document has never been the only aspect taken into consideration in deciding whether to release it under Decision 93/731/EC, the sole effect of Article 8 being that the Council declassify confidential documents that it decides to release.

Arrangements for the protection of classified information are governed by Decision 24/95 of the Secretary-General of the Council, which entered into force on 1 March 1995. Under these arrangements the criterion for classifying documents is the level of security which must be applied to them in direct relation to their content. Decision 24/95 of the Secretary-General in no way prejudices the rules and procedures laid down by the Council regarding transparency.

⁽⁷⁾ See Article 22 of the Council's Rules of Procedure and Decision No 24/95 of the Secretary-General of the Council on measures for the protection of classified information applicable to the General Secretariat of the Council.

3.5. Procedural questions

(a) Time limits

Article 7 of Decision 93/731/EC lays down a maximum period of one month for both the initial reply given by the General Secretariat and that given by the Council in the case of a confirmatory application. Failure to reply within the time limit is equivalent to a refusal of access to the documents.

Experience demonstrates that one month is not long enough at certain times of the year (holiday periods or at the beginning of a Presidency) and/or in the case of particularly delicate applications or those relating to a large number of documents.

To solve these problems, the Decision could include a provision allowing the time limits for the initial reply and for the reply to a confirmatory application to be extended by one month. The applicant, who would be informed of the extension in writing, would thus be more certain of appropriate examination of the application by the various bodies concerned.

(b) Other practical provisions

- The Decision lays down that an applicant may have access to a Council document either by consulting it on the spot or by having a copy sent at his own expense. A fee was laid down by Decision of the Secretary-General of the Council on 27 February 1996 ⁽⁸⁾. The Council charges the same fee as does the Commission.

⁽⁸⁾ OJ No C 74, 14.3.96, p. 3.

- Once this report has been published, the present Article 9 will become pointless. The Council may, however, decide to replace it and make provision for a biennial evaluation report.
- Following the move of the Council Secretariat into new premises, the Council's address as set out in a footnote to Article 2(1) should be changed (175 instead of 170 rue de la Loi).

3.6. Recourse to law

In the 1994-1995 reference period, three cases were brought before the Court of Justice or the Court of First Instance under Decision 93/731/EC:

- C-58/94 Netherlands v. Council, which resulted in the judgment of the Court of Justice of 30 April 1996;
- T-194/94 John Carvel and Guardian Newspapers Ltd. v. Council which culminated in the judgment of the Court of First Instance of 19 October 1995;
- T-174/95 Tidningen Journalisten v. Council, pending before the Court of First Instance.

In Case C-58/94, the Kingdom of the Netherlands sought the annulment of three acts: Decision 93/731/EC, Article 22 of Council Decision 93/662/EC adopting the Council's Rules of Procedure and the Code of Conduct concerning public access to Council and Commission documents. The Netherlands Government argued that the Council had committed an abuse of power in that it based the rules on citizens' means of access to documents in its possession in Article 151 of the EC Treaty, which authorizes it to adopt its Rules of Procedure. However, in the applicant's opinion, this question could not be reduced to a mere question of the organization of the Council's internal operation.

The Court of Justice dismissed the application by the Netherlands in a judgment of 30 April 1996 (not yet published). The Court affirmed in this connection that *"so long as the Community legislature has not adopted general rules on the right of public access to documents held by the Community institutions, the institutions must take measures as to the processing of such requests by virtue of their power of internal organization which authorizes them to take appropriate measures in order to ensure their internal operation in conformity with the interests of good administration.*

The fact that Decision 93/731 has legal effects vis-à-vis third parties cannot call into question its categorization as a measure of internal organization. There is nothing to prevent rules on the internal organization of the work of an institution having such effects.

Consequently, as Community law stands at present, the Council is empowered to adopt measures intended to deal with requests for access to documents in its possession."

As regards Case T-194/94, John Carvel and Guardian Newspapers Ltd. v. Council, the Court of First Instance delivered a judgment on 27 October 1995 by which it annulled the implied decision of the Council refusing the applicants access to the preparatory report, the minutes, attendance and voting records of the Justice Council on 29 and 30 November 1993 and the decision contained in the letter of the Council of 17 May 1994 refusing access to the minutes of the Agriculture Council of 24 and 25 January 1994.

This judgment was given wide coverage in the media, but the Tribunal's reasoning has not always been reflected correctly. The Tribunal annulled the Council's decisions solely because, when the Council exercised its discretion under Article 4(2) of the Decision, it had an obligation to "genuinely balance the interest of the citizen in gaining access to its documents against any interest of its own in maintaining the confidentiality of its deliberations". In the case in question, however, the Court considered that the Council had not genuinely balanced the interests involved and the decisions had, therefore, to be annulled. This concept of balance of interests between the interest of the citizen in obtaining access to documents and any interest of the Council in maintaining the confidentiality of its deliberations is of major importance. It is, furthermore, closely linked to the degree of consideration given to requests for access to documents. In other words, to ensure the balance of interests, careful consideration must be given to each request for documents.

The results of the last two years have been positive in this respect. It is a fact that the General Secretariat and the Council have acquired more and more experience in an area which was new for the Council before adoption of the Decision. Thus the failure to balance interests which the Tribunal felt obliged to draw attention to in the Guardian case – the facts of which go back to the first half of 1994 – should no longer occur on account of the greater mastery applied in this area by the departments preparing Council decisions and thanks to the steady increase in human and material resources invested in this sector by the Secretariat. Several of the suggestions contained in this report are designed to ensure that the Council's departments are always in a position to give careful consideration to requests for documents.

The third case, T-174/95, *Tidningen Journalisten v. Council*, which is still pending, raises other types of problems concerning the implementation of the Decision. A journalist had asked the Council for 20 Europol documents while the Convention was still being negotiated. After careful consideration of his request by the Council acting in accordance with Decision 93/731/EC, he obtained 4 of the documents. However, the applicant had already obtained 18 of them through the civil service of a Member State.

Attention is drawn to the fact that the purpose of Decision 93/731/EC is that the Council should consider whether to agree to a request for access to its documents, in accordance with its own pre-determined rules.

Decision 93/731/EC itself would be superfluous if the applicant were able to obtain the document through a civil service despite a decision to the contrary by the Council ⁽⁹⁾.

⁽⁹⁾ From a legal point of view, the judgment of the Court in case C-58/94 stated that Council Decision 93/731/EC was valid and had legal effects vis-à-vis third parties as regards access to Council documents.

XIV.

**Council conclusions
on the review of Council Decision 93/731/EC
on public access to Council documents
(July 1996)**

11974/96 - COR 1 REV 1

**COUNCIL CONCLUSIONS
ON THE REVIEW OF COUNCIL DECISION 93/731/EC
ON PUBLIC ACCESS TO COUNCIL DOCUMENTS**

In the context of the review of Council Decision 93/731/EC on public access to Council documents provided for in Article 9 of that Decision, the Council has approved the following conclusions:

"The Council reaffirms the general principle that the public will have the widest possible access to documents held by the Council, as an additional measure to improve transparency of the decision-making process and the citizen's confidence in the institution.

The Council notes the number of cases that are satisfactorily resolved and the steady increase in positive replies, which is largely due to the Council's growing experience in an area that was new to it prior to the adoption of the Decision.

The Council sees no need to alter the basic features of the Decision, which has proved its worth in making the Council's work more transparent.

Nonetheless, in the light of experience and in view of the ever-increasing number of applications for access to documents, it considers that some specific amendments should be made to the text of the Decision.

In addition, certain practices should be introduced in the day-to-day conduct of the policy, but these do not involve any changes to the text of the Decision.

1. The adjustments to the Decision agreed by the Council are as follows :

- 1.1 include a provision enabling the time limit for replies to be extended by one month as an exceptional measure and after informing the applicant, so that in future it will be possible to avoid irregularities arising from the difficulty of replying to certain applications in periods of reduced working capacity, particularly in the case of confirmatory applications;
- 1.2 ask the Secretary-General of the Council to submit reports on the implementation of the Decision every two years.

2. Regarding measures involving no changes to the Decision, the Council:

- 2.1 asks the Secretary-General to take steps, possibly in conjunction with delegations and the other Institutions, to alert the public to the possibilities regarding transparency at the Council, particularly in connection with access to documents;
- 2.2 takes note that the Secretary-General, in the context of the fees fixed under the Decision, will examine the question of applications covering a high number of documents and hence involving particularly high administrative costs;
- 2.3 takes note of the intention of the Secretary-General to look into the possibility of establishing a register of documents."

XV.

**Council Decision
amending Decision 93/731/EC
on public access to Council documents
(6 December 1996)**

OJ No L 325, 14.12.1996, p. 19

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 6 December 1996

amending Decision 93/731/EC on public access to Council documents

(96/705/Euratom, ECSC, EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Community, and in particular Article 151 (3) thereof,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 30 (2) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 121 (2) thereof,

Having regard to its Rules of Procedure, and in particular Article 22 thereof,

Whereas experience has shown that a number of amendments need to be made to Council Decision 93/731/EC of 20 December 1993 on public access to Council documents⁽¹⁾;

Whereas provision should be made for some flexibility in the time limits for the General Secretariat's reply to an application for access to a Council document and the Council's reply to a confirmatory application; whereas use of this option should be exceptional;

Whereas Article 9 of Decision 93/731/EC is obsolete and should be replaced,

Article 1

Decision 93/731/EC is hereby amended as follows:

(i) in footnote 1 to Article 2 (1), '170 rue de la Loi' shall be replaced by '175 rue de la Loi';

(ii) the following paragraph shall be added to Article 7:

'5. Exceptionally, the Secretary-General, having notified the applicant in advance, may extend by one month the time limits laid down in the first sentence of paragraph 1 and in paragraph 3';

(iii) Article 9 shall be replaced by the following:

'Article 9

In 1996, and every two years thereafter, the Secretary-General shall submit a report on the implementation of this Decision.'

Article 2

This Decision shall take effect on the day of its publication in the *Official Journal of the European Communities*.

Done at Brussels, 6 December 1996.

For the Council

The President

D. SPRING

⁽¹⁾ OJ No L 340, 31. 12. 1993, p. 43.

XVI.

**Presidency conclusions
on openness and transparency in the activities of the Council
acting in the field of Title VI of the TEU
(19 March 1998)**

6067/98

**Transparency in the activities of the Council
acting on the field of Title VI of the TEU**

Presidency conclusions

The Presidency concludes that the Council is in favour of:

- (i) making available to the public the calendar of the K4 Committee and other JHA working groups;
- (ii) increasing the number of press briefings on JHA matters during each Presidency, subject to each Presidency's view of the appropriateness at the time. These would not be specifically linked to meetings of the K4 Committee;
- (iii) making available a progress report towards the end of each Presidency on JHA business. Such a document would be drawn up under the responsibility of the Presidency. It could be supplemented, as necessary, by explanatory publications on JHA matters, taking account of the resources available;
- (iv) having an open debate in JHA matters during each Presidency where a suitable topic arises subject to the demands on time of other agenda items;
- (v) making available to the public proposals in the field of JHA at the same time as they are made available to the European Parliament. As a first step, they would be made available, for example, on the Internet, but the Council would aim to make arrangements as soon as possible to allow their publication in the Official Journal;
- (vi) making available a list of measures adopted by the Council in the field of JHA.

XVII.

**Council Decision
on establishing a public register of Council documents
(19 March 1998)**

6423/1/98 REV 1

1. In the context of openness and transparency, a register of Council documents will be developed by the Council General Secretariat as a complement to the existing system of electronic storage of Council documents, as soon as possible, preferably during 1998.
 2. The register will contain titles, dates and document codes of unclassified Council documents. To preserve the Council's right not to communicate a document, the register will not display the content of the documents.
 3. The register will be made available to the public via the Internet. It will be a multilingual tool offering an adequate range of facilities enabling any citizen to identify Council documents.
 4. The General Secretariat will take appropriate organizational measures in order to guarantee its reliability and exhaustiveness.
 5. According to the General Secretariat, the implementation of the register will not require any additional budget provision or additional staff.
 6. The General Secretariat will take steps to publicise the existence of the register and submit a report on its functioning after six months of operation.
-

XVIII.

**Second report
on the implementation of Council Decision 93/731/EC
on public access to Council documents
(19 June 1998)**

6715/2/98 REV 2 COR 1

INTRODUCTION

The conditions governing public access to Council documents are laid down by Decision 93/731/EC ⁽¹⁾, as amended by Decision 96/705/EC ⁽²⁾, in accordance with the principles set out in the Code of Conduct of 6 December 1993 concerning public access to Council and Commission documents ⁽³⁾. Decision 93/731/EC stipulates a maximum time for replying to an applicant for a Council document, and provides for a detailed examination of his application together with the possibility of making a confirmatory application should the initial reply from the Secretary-General of the Council be a rejection.

Should a confirmatory application be rejected, the applicant is notified of the content of Articles 138 E and 173 of the Treaty establishing the European Community, relating respectively to the conditions for referral to the Ombudsman by natural persons and to the review by the Court of Justice of the legality of Council acts.

Pursuant to Article 9 of the Decision, the Secretary-General of the Council must, in 1996, and subsequently every two years, submit a report on implementation of the Decision.

The first report by the Secretary-General, submitted in July 1996 ⁽⁴⁾, reviewed the policy of public access to Council documents for the first two years of its implementation (1994-1995). That report gave rise to the amending Decision referred to above, and to the Council's adoption of a set of conclusions on public access to Council documents on 6 December 1996. ⁽⁵⁾

Following the pattern of the first report, this report, which has been drawn up on the responsibility of the Secretary-General, contains:

- a review of the policy of public access to Council documents for the period 1996-1997;
- a brief analysis of the main issues arising in implementation of that policy, including disputes to which it has given rise during that period.

1. LAUNCHING AND CONSOLIDATION OF THE POLICY OF ACCESS TO DOCUMENTS

The period covered by this report was one of consolidation of the document access policy and of the various measures recently adopted by the Council to increase the transparency of its work and thereby bolster peoples' confidence in the Council.

Following the first period, 1994-1995, which could be regarded as a "running-in" period for document access, when the different Council structures had to adapt to requirements which had not been experienced to that point, the scheme took off in the period 1996-1997 with an increase in the number of applications dealt with and a degree of standardization in Council practice. This dual phenomenon was accompanied by an increased awareness on the part of all those involved that greater transparency was necessary.

⁽¹⁾ OJ L 340, 31.12.1993, p. 43.

⁽²⁾ OJ L 325, 12.12.1996, p. 19.

⁽³⁾ OJ L 340, 31.12.1993, p. 41.

⁽⁴⁾ 8330/96.

⁽⁵⁾ 11974/96 + COR 1 REV 1.

That this policy in fact took off is illustrated by the fact that the number of documents applied for under the Decision increased virtually tenfold over the two two-year periods (see statistical table in the **Annex**), 3 325 documents being compulsorily examined in 1996-1997 as against 378 in 1994-1995.

This substantial increase is reflected in the number of individual cases, or applications made, which generally speaking were for several documents; the number of applications increased from 142 in 1994-1995 to 451 in 1996-1997.

Once they are registered, applications for access to Council documents are examined by the appropriate departments of the General Secretariat and the applicant notified of the outcome.

Where an application is rejected, the applicant is informed of the grounds for refusal, and then has one month to make a confirmatory application to have the General Secretariat's decision reviewed by the Council.

The confirmatory applications are then examined by the Council's preparatory bodies (Working Party on Information and Permanent Representatives Committee) before the Council adopts its reply.

The statistics for the whole procedure (initial applications and confirmatory applications) reveal that the percentage of documents supplied increased from 58,7% in 1994-1995 to 78,3% for the period covered by this report despite a considerable increase in the number of documents requested.

The explanation for this upward trend to the benefit of applicants is attributable to the increase in the percentage of documents supplied by the General Secretariat on behalf of the Council, i.e. at the first stage of the procedure, from 48,9% for the period 1994-1995 to 72,7% in 1996-1997.

This is largely due to the experience gained by the General Secretariat in interpreting Decision 93/731/EC. The General Secretariat acts on behalf of the Council when it sends applicants preliminary replies.

Although it had to deal during the reference period with three times more confirmatory applications following the General Secretariat's refusal to supply documents, the Council overturned the General Secretariat's initial reply for only 5,6% of documents; that percentage had been close to 10% in the preceding two-year period.

Another noteworthy aspect which provides some evidence that the policy has stabilized, is the growing number of unanimous replies given by the Council to confirmatory applications. In fact half the confirmatory applications made during the reference period were given unanimous replies by the Council, and a large number were voted down by only one or two members of the Council.

2. PROGRESS MADE BY THE COUNCIL TOWARDS OPENNESS AND TRANSPARENCY

Clearly, with the percentage of documents supplied approaching 80% and a high number of documents being considered, the policy of public access to documents is proving to be a useful and efficient instrument in aid of transparency.

Such a conclusion seems even more appropriate at a time when the largest number of applications concern the Council's activities in the particularly sensitive area of cooperation on Justice and Home Affairs.

It is important here to stress that the opportunity to gain access to Council documents is only one element among many in the Council's general policy of openness and transparency, which has developed considerably in the last few years.

Pride of place must go to the efforts made by successive Council Presidencies and by the General Secretariat's Press Office to achieve greater transparency in the Council's discussions for the benefit of the media, together with the important contribution made by the Member States individually and by the Commission, which participates in the Council's discussions at every level and also helps to give briefings on its discussions.

The practice of public Council debates – accessible both to journalists and the general public – continued (18 in 1996; 16 in 1997). A recent move to make many more people aware that these debates existed drew more than 200 people, other than journalists, to the Council chamber to follow its deliberations. In addition, there is the potentially huge audience for the debates when televised by TV stations via the Commission's "Europe by Satellite" channel and, less often, live by TV stations.

Nonetheless, in view of the still relatively low impact and drawing power of such debates, the Council should consider how best to maximize the potential of such an instrument.

Implementation of the measures on legislative transparency was also continued during the reference period.

The Council thus systematically made public details of the voting when legislative acts were adopted. The Council and its Members also made moderate use of the statements entered in the minutes on the final adoption of such acts. Under the Code of Conduct of 2 October 1995, the Council allowed access to 398 statements in the minutes in 1996 and 361 in 1997 for a total of 229 and 218 legislative acts respectively.

The Council General Secretariat made arrangements for statements in the Council minutes, entered when legislative acts were finally adopted, and extracts from the relevant minutes to be available on the Internet in the course of 1998, using the "Eudor" system (<http://eudor.eu.com>) which is managed by the Office for Official Publications of the European Communities.

Apart from the monthly summaries prepared by the Council General Secretariat, which include any statements in the minutes and details of the voting in respect of legislative acts which have been finally adopted, annual summaries are prepared for each sector and since 1995 have been published as an Annex to the "Review of the Council's work".

As regards positive measures to increase information about the Council's work, the General Secretariat undertook a series of initiatives in the form of conventional publications (leaflets, brochures, reference works and compilations of texts) but more particularly in the area of electronic publishing.

The Council thus has a website (<http://ue.eu.int>) giving access in all the official Community languages to press releases and other news published by the General Secretariat's Press Office, accounts of the aims and working methods of the Council with practical information, plus an easy-to-consult database containing the texts adopted under the Common Foreign and Security Policy (CFSP).

A similar database to the CFSP one, also accessible from the Council's website, will shortly be set up for texts adopted in the area of Justice and Home Affairs (JHA).

The Council's website is visited by an average of 4 000 people a week, who consult an average of ten different pages. In addition, an average 80 requests for information per month are received by e-mail at the address public.relations@consilium.ue.int shown on the home page of the website.

This electronic dialogue option is in addition to the numerous requests for information made to the General Secretariat's documentation and information services by more conventional means, as well as requests made directly to other General Secretariat departments, not to mention direct contacts with people on information visits to the Council and at public events such as the annual Open Day.

Following the Council's request to the Secretary-General ⁽¹⁵⁾ to take steps to alert the public to the possibilities regarding transparency at the Council, particularly in connection with access to documents, the General Secretariat produced a Council Information Guide, which explains how the different instruments operate, thus enabling the general public in particular to keep informed about the work of the Council in practical terms.

Furthermore, in view of the perceived specific needs for transparency in the work stemming from cooperation in the area of Justice and Home Affairs (JHA), the Council agreed on 19 March 1998 on a number of measures ranging from publication of schedules of meetings to an increase in the number of press briefings and publication of periodic reports, explanatory documents and lists of measures taken by the Council in the JHA field.

3. MAIN FEATURES IN THE POLICY ON ACCESS TO DOCUMENTS

3.1. Identifying documents – establishing a public register

Article 2 of Decision 93/731/EC lays down that applications must be made in a sufficiently precise manner, failing which applicants may be asked for further details before their applications can be considered.

From the outset one of the main problems in the day-to-day operation of the policy on public access to Council documents has precisely been the difficulty that applicants have had in identifying the documents they require.

⁽¹⁵⁾ Council conclusions of 6 December 1996 (11974/96 + COR 1 REV 1).

To alleviate this problem, the first report on the implementation of Decision 93/731/EC put forward the possibility of establishing a register of Council documents.

In view of these difficulties, the Council on 6 December 1996 noted the Secretary-General's intention of examining whether it would be possible to establish such a register. This examination was conducted in 1997, leading to the General Secretariat presenting a draft proposal at the beginning of 1998.

On the basis of that draft proposal, on 19 March 1998 the Council decided to publish as soon as possible, preferably in 1998, a register of Council documents as a counterpart to the existing system of electronic archiving of Council documents.

The register will be available to the public via the Internet. It will be a multilingual tool offering an appropriate range of options which will enable anyone to identify Council documents. It will contain the titles, dates and reference numbers of non-classified documents, but will not allow the content of the document to be posted on screen so as to preserve the right of the Council not to communicate a document for one of the reasons adduced in Decision 93/731/EC.

The availability of the register via the Internet should mean a wider professional and geographical spread of applicants, as these have hardly changed since the establishment of the policy of access to documents (see statistics in the **Annex**).

3.2. Application of Article 4 – cases in which access to a document shall not be granted

The first report on implementation of Decision 93/731/EC alerted the Council to the problems of protecting documents containing legal positions of the Council Legal Service and also giving protection to the Council's proceedings.

- (a) The question of legal positions of the Legal Service has since been the subject of the Order made by the President of the Court of First Instance on 4 March 1998 in Case T-610/97, *Hanne NORUP CARLSEN v. Council*. In paragraphs 45 and 46 of that Order, in the context of the request for an injunction ordering the Council to release to the Højesteret (the Danish Supreme Court) and the parties in the case pending before that court documents setting out opinions of the Council and Commission Legal Services dating from 1977, the President of the Court comments that were the Opinions on legal matters delivered by the Institutions' Legal Services to be divulged, "*the discussions and exchanges of views within the institutions on the legality and scope of the legal measure to be adopted would be made public and hence, as it stated, the Council might lose all interest in asking the Legal Services for written opinions. In other words, it appears, at least on an initial examination, that disclosure of those documents could give rise to uncertainty with regard to the legality of Community measures and have a negative effect on the functioning of the Community institutions. The stability of the Community legal order and the proper functioning of the institutions, which are matters of public interest for which it is unquestionably necessary to have due regard, would suffer as a result*".

In addition, the President of the Court comments that "*given the special nature of opinions of the Legal Services, it would not appear that those documents are bound, over the years, to lose their confidential character. Their disclosure could still be detrimental to the public interest in the stability of the Community legal order and the proper functioning of the Community institutions, inasmuch as time is not likely to alter the reasons, mentioned above, justifying such an exception to the right of access*" (paragraph 50 of the Order).

The main proceedings concerning the legality of that decision are still in progress.

- (b) With reference to the option given in Article 4(2) of Decision 93/731/EC whereby access to documents may be refused in order to protect the Council's proceedings, the period 1996-1997 saw such justification being used less and less frequently in cases of refusal of access, at least for Council documents where the Council acted as legislator.

A growing number of documents containing delegations' positions, even in great detail, were accordingly released to applicants, particularly when the matters covered were the subject of an act adopted by the Council. In such cases, the balance between the Council's interest in protecting the confidentiality of its proceedings and that of the public in knowing the background to the conception of an Act which might be of direct concern to citizens frequently swung in favour of the latter.

The General Secretariat's practice in the first stage, and that of the Council at the confirmatory stage, reflects the political will of the Member States as expressed in the Amsterdam Treaty signed on 2 October 1997. It would therefore seem a good idea to continue this practice so that in cases of documents concerning the Council acting as legislator, the clause on protecting the Council's proceedings (Article 4(2) of the Decision) would be used with moderation, with Article 4(1) of the Decision being the most frequently invoked provision in cases where access was refused.

There was growing public interest during this period in other Council activities, particularly in the field of cooperation on Justice and Home Affairs (JHA), and this was reflected in a very high number of applications in this area (46% of documents requested in 1996/1997). The fact that, once adopted, a large proportion of the acts adopted by the Council in this area may be of potential significance to citizens and to natural persons who are citizens of third countries, has a considerable influence on the balance of interests when it comes to releasing preparatory documents for such acts. This explains why there is often a large majority – even unanimity – in the Council in favour of granting requests for access to documents containing delegations' positions once the act in question has been adopted, given of course the major consideration that the effectiveness of the Council's decision-making process must be preserved for the future.

3.3. Application of Article 2(2) (documents not drafted in the Council)

Article 2(2) of Decision 93/731/EC states that *"where the requested document was written by a natural or legal person, a Member State, another Community Institution or body, or any other national or international body, the application must not be sent to the Council, but direct to the author."*

Implementation of this clause has in practice given rise in particular to a problem of interpretation concerning Council Presidency documents. On this point, the Council in its reply to a question from the European Ombudsman (see below) explained that for the purposes of Article 2(2) of the Decision a distinction should be made between documents drafted by a member of the Council holding the Presidency in its capacity as the Member State in the Council Presidency, and documents produced by that Member State which did not stem from its capacity as holder of the Council Presidency but contained a national position. Under Decision 93/731/EC it was for the Council to decide whether or not it was possible to grant access to documents of the first type, whereas Article 2(2) of that Decision applied to documents of the second type.

3.4. Procedural questions

Further to the comments made in the first report on implementation of Decision 93/731/EC, the Council decided to include a clause in the text of the Decision allowing, as an exception and after notifying the person concerned, for a one-month extension to the time-limits for reply.

This provision has been in force since 14 December 1996, the date when Decision 96/705/EC amending Decision 93/731/EC entered into force. No objection has been raised to the General Secretariat and the Council exercising this option whenever practical considerations such as holiday periods called upon it to do so.

3.5. Manifestly excessive applications

The first report on the implementation of the Decision highlighted the issue of applications which are manifestly excessive or involve disproportionate costs.

It should be noted that the only provision in the Decision to shield the institution from such practices is Article 3(2), which stipulates that the relevant departments of the General Secretariat shall endeavour to find a fair solution to deal with repeat applications and/or those which relate to very large documents.

In spite of the differing ways in which that provision has been construed, the Council did not see fit, in the first review, to clarify this principle in order to cope with applications clearly designed to put the system to the test.

However, with a sizeable increase in applications in prospect, particularly following the introduction of a public register of documents, this point would seem to call for closer consideration.

In this connection the figures show that, over the period 1996-1997, two applicants alone accounted for 58% of the documents applied for. As a result of their 62 and 55 initial applications and their subsequent 17 and 20 confirmatory applications, those two applicants each obtained over 700 documents from the Council.

There can be no escaping the fact that the administrative cost of scrutinizing the documents in question and handling applications is out of all proportion to the contributions levied by way of fees ⁽¹⁶⁾.

It should be pointed out that a confirmatory application involves detailed examination not only by the various departments concerned in the General Secretariat but also at one or more meetings of the Council Working Party on Information, with delegations first being sent copies of the documents applied for, preparation of draft replies in the official languages and consideration of cases by Permanent Representatives (Coreper) and by Ministers at a Council meeting.

In the first review of Decision 93/731/EC, the Council took note that "the Secretary-General, in the context of the fees fixed under the Decision, will examine the question of applications covering a high number of documents and hence involving particularly high administrative costs". No action has to date been taken on that statement.

It should be pointed out here that, even though some applicants might derive commercial gain from the documents obtained, the clause in Article 3(3) of the Decision ⁽¹⁷⁾ has not been invoked either by any applicant or by the Council where one of the applicants proved in fact to have published a collection of texts.

3.6. Legal action and complaints to the Ombudsman

(a) Legal action

In early 1996 there was a sequel to Case T-194/94 (*John Carvel and Guardian Newspapers v. Council*), already referred to in the previous report, before the Court of First Instance (Case T-19/96, *John Carvel and Guardian Newspapers v. Council*).

Following the judgment given by the Court of First Instance on 19 October 1995 in Case T-194/94 ⁽¹⁸⁾, annulling the Council's decision to reject the applicants' confirmatory application, the Council reconsidered that application and in a letter of 27 November 1995 supplied a number of

⁽¹⁶⁾ The Decision of the Secretary-General of the Council of 27 February 1996 (OJ C 74, 14.3.1996, p. 3) sets a fee of ECU 10 plus ECU 0,036 per sheet of paper, only where copies sent exceed 30 pages.

⁽¹⁷⁾ Article 3(3) of the Decision reads as follows:
"Anyone given access to a Council document may not reproduce or circulate the document for commercial purposes through direct sale without prior authorization from the Secretary-General."

⁽¹⁸⁾ ECR II-2767.

documents to the applicants. That reply gave rise to further proceedings by the applicants in the main case, who considered that the Council had failed to supply some documents covered by their application. After the Council supplied further documents, the applicants asked the Court to remove the case from the register and order the Council to pay the costs of the proceedings.

In its order of 22 October 1996 in Case T-19/96 ⁽¹⁾, the Court of First Instance removed the case from the register and ordered the applicants to pay the costs of the proceedings, mainly on the grounds that the Council had not been unreasonable in its interpretation of the subject of the applicants' original request. The Court therefore held that in this instance the applicants had not been compelled by the Council's attitude to bring their proceedings unnecessarily.

In the period covered by this report, Decision 93/731/EC has given rise to only one further dispute: Case T-14/98, *Heidi Hautala v. Council*. In an application notified to the Council on 21 January 1998, Ms Hautala, MEP, brought proceedings before the Court of First Instance for annulment of the Council's decision of 4 November 1997 refusing access to a document drawn up under the common foreign and security policy, namely a report to the Political Committee by the Working Party on Conventional Arms Exports. The Council decided that disclosure of the report in question could be harmful to the European Union's relations with non-member countries and it therefore refused access to the document.

Case T-174/95 (*Tidningen Journalisten v. Council*), already referred to in the previous report, is still pending before the Court of First Instance.

Mention should also be made here of two judgments by the Court of First Instance with regard to Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents ⁽²⁾, namely the judgment of 5 March 1997 in Case T-105/95, *WWF UK v. Commission*, ECR II-315, and the judgment of 6 February 1998 in Case T-124/96, *Interporc Im- und Export GmbH v. Commission*, not yet published.

Lastly, although the subject-matter of the dispute was a decision by the Council based not on Decision 93/731/EC but on Article 5(2) of the Council's Rules of Procedure, the question of not allowing public access to opinions given by the Council Legal Service was the subject of the Order made by the President of the Court of First Instance on 4 March 1998 in Case T-610/97 (*Hanne NORUP CARLSEN v. Council*), referred to earlier.

(b) Complaints to the Ombudsman

In 1997 the European Ombudsman received two complaints, in January and July 1997 respectively, concerning the Council's implementation of Decision 93/731/EC. The complainants, who are the abovementioned two frequent applicants for large numbers of Council documents, raise the following main points:

⁽¹⁾ ECR II-1520.

⁽²⁾ OJ L 46, 18.2.1994, p. 58.

- * the application by the Council of the fair solution referred to in Article 3(2) of Decision 93/731/EC to deal with repeat applications and/or those which relate to very large documents;
- * the keeping and filing away in historic archives of the telexes sent to delegations to give notice of meetings;
- * the lack of lists of decisions taken by the Council in the field of JHA cooperation;
- * the form in which reasons are given for decisions refusing access to Council documents and the consideration en bloc of a number of applications for access;
- * the Council's alleged failure in specific cases under Article 4(2) of Decision 93/731/EC to weigh the applicant's interest in gaining access to a document against the Council's interest in maintaining the confidentiality of its proceedings;
- * the Council's interpretation of Article 4(1) of Decision 93/731/EC as regards refusal to grant access to a document from the Working Party on Terrorism;
- * the lack of any register of Council documents.

The Ombudsman is currently looking into the merits of those complaints in the light of comments and further information provided by the Council. However, at least two of the points raised by the complainants have already been addressed either by a change in Council practice or by specific measures decided on by the Council.

- * A register of Council documents is to be made available to the public on the Internet as soon as possible, if all goes well in 1998 (see 3.1 above).
- * The fair solution referred to in Article 3(2) of Decision 93/731/EC, only very rarely used in the past, is even less used now, despite constant applications by the two complainants in question, who are using a systematic approach to obtain almost all documents within a particular area of Council activities (JHA).



**STATISTICS
ON PUBLIC ACCESS TO COUNCIL DOCUMENTS**

1. Number of applications under Decision 93/731/EC

1994-1995	1996-1997	1996	1997
142	451	169	282

2. Number of documents involved

1994-1995	1996-1997	1996	1997
378	3 325	894	2 431

3. Documents supplied by the General Secretariat of the Council initially

1994-1995	1996-1997	1996	1997
185	2 418	631	1 787

4. Number of confirmatory applications

1994-1995	1996-1997	1996	1997
16	61	24	37

5. Documents supplied by the Council following confirmatory applications

1994-1995	1996-1997	1996	1997
37	187	63	124

6. Percentage of documents supplied for the procedure as a whole

1994-1995	1996-1997	1996	1997
58,7%	78%	77,6%	78,3%

7. Occupational background of applicants

	1994-1995	1996-1997
Members of the European Parliament	5%	3%
Pressure groups	9%	10%
Lawyers	25%	17%
Journalists	23%	6%
Academics	27%	43%
Industrial sector	2%	3%
Others	8%	18%

8. Geographical breakdown of applicants

	1994-1995	1996-1997
Belgium	31%	27%
Denmark	4%	2%
Germany	15%	15%
Greece	–	–
Spain	2%	5%
France	6%	4%
Ireland	–	2%
Italy	4%	4%
Luxembourg	2%	4%
Netherlands	7%	6%
Austria	–	2%
Portugal	–	–
Finland	–	4%
Sweden	3%	1%
United Kingdom	25%	21%
Non-member countries (USA, Norway, Switzerland and Japan)	3%	2%

9. Subject matter of applications ⁽¹⁾

	1994-1995	1996-1997
Legal matters	3%	1%
Agriculture and fisheries	3%	4%
Internal market	17%	13%
External policies – CFSP	11%	13%
Operation of the institutions	19%	5%
Economic and monetary policy	4%	3%
Justice and home affairs	20%	46%
Environment	10%	4%
Social policy	8%	3%
Transport	1%	0,5%
General policy matters (IGC and European Council)	–	3%
Culture	–	1%
Health	–	0,5%
Consumer protection	–	1,5%
Regional policy and economic and social cohesion	–	0,5%
Energy	2%	1%
Development cooperation	–	0,5%

⁽¹⁾ A number of applications related to more than one field.

10. Reasons given for refusing access ⁽¹⁾

	1994-1995	1996-1997
Protection of the public interest (public security, international relations, monetary stability, court proceedings, inspections and investigations), including upholding the stability of Community law	18%	20%
Protection of the individual and of privacy	3%	0,5%
Protection of commercial and industrial secrecy	2%	0,5%
Protection of the Community's financial interests	1%	0,5%
Protection of the confidentiality of the Council's proceedings	44%	68%
A combination of errors	25%	9%
Other reasons	7%	-

11. Total fees charged

1996	1997
ECU 400	ECU 930

⁽¹⁾ In the General Secretariat's initial replies.

XIX.

**Council conclusions on
the second review of Council Decision 93/731/EC
on public access to Council documents
(29 June 1998)**

9191/98 - Annex I

In the context of the bi-annual review of Council Decision 93/731/EC on public access to Council documents provided for in Article 9 of that Decision, the Council has adopted the following conclusions:

1. The Council takes note of the report from the Secretary-General on the implementation of Council Decision 93/731/EC of 20 December 1993 on public access to Council documents during 1996 and 1997.
2. The Council notes that there has been a significant increase in requests for Council documents and welcomes the increase in positive responses given to these requests, which has risen to 78% in 1996/1997, up from 58.7% in 1994/1995. This evolution reflects the experiences of the Council and the General Secretariat in the day-to-day conduct of that policy and proves the Decision's value in promoting openness and transparency.
3. In a spirit of openness and transparency, access to Council documents should be granted, whenever possible, when the Council acts as legislator. In those cases, article 4, paragraph 2 of the Decision (refusal of access in order to protect the confidentiality of the Council's proceedings) will continue to be invoked only as strictly necessary.
4. The Council notes that the identification of Council documents will be facilitated by the creation, as soon as possible, preferably during 1998, of a listing of Council documents available via Internet, following the Council decision of 19 March 1998.
5. The Council notes that increased access to documents is but one aspect of its aim to make its work more open and transparent to the citizen. It therefore welcomes the initiatives taken to inform the public about the Council's activities, including the publication of an Information Guide to the Council by the General Secretariat, the active policy in informing the public about the public sessions of the Council, as well as recent improvements in the Council web site and the establishment of a public E-mail address.

XX.

**Council conclusions on openness
(29 June 1998)**

9191/98 - Annex II

COUNCIL CONCLUSIONS ON OPENNESS
(29 June 1998)

Taking into account the result of the seminar on information about the European Union, held in Brussels on 27 March 1998 by senior officials from Member States information departments and representatives of several EU institutions, the Council has adopted the following conclusions :

1. The Council considers that the seminar on information about the European Union has demonstrated the benefits of exchanging experiences on information policy concerning European Union questions and public awareness about the European Union.
2. The Council agrees to organise, in cooperation with the Commission, periodic seminars, where appropriate, as well as specialised meetings on issues of particular interest (European parliament elections, information to EU enlargement candidates...) or specific communication vectors (Internet, audiovisual services...) in order to create a platform for permanent exchange of ideas and experiences and to achieve better coordination between the various actors involved. This cooperation should contribute towards a better adaptation of information activities to the real needs of both the specialized and the general public, to avoid duplication and to provide the EU institutions with a regular feedback from Member States.
3. The Council welcomes the Commission's intention to establish an information exchange mechanism, based on the Internet, to enable the various actors in the information field, at a EU as well as at national level, to receive regularly information about new products and new initiatives of the EU institutions and the Member States and to allow a permanent exchange of views on information policy about European matters. The Council believes that such a mechanism could usefully build on existing networks, rather than duplicating them.
4. Networking could also be particularly appropriate for enhancing cooperation between the managers of Internet servers of national administrations and EU institutions with the aim of achieving closer links between the services offered at national and Community levels.
5. The efforts made in the field of new technologies should go hand in hand with better coordination of information activities involving direct contact with the citizen, for instance visitors programmes and in particular those targeted at the media.
6. The Council supports increased cooperation between EU institutions in information policy.

XXI.

**Conclusions of the Cardiff European Council on transparency
(16 June 1998)**

SN 150/1/98 - REV 1

**Conclusions of the Cardiff European Council on transparency
(16 June 1998)**

BRINGING THE UNION CLOSER TO PEOPLE

A sustained effort is needed by the Member States and all the institutions to bring the Union closer to people by making it more open, more understandable and more relevant to daily life. The European Council is therefore particularly concerned to see progress in policy areas which better meet the real concerns of people, notably through greater openness, and progress on environment and justice and home affairs.

OPENNESS

The European Union is committed to allowing the greatest possible access to information on its activities. The Internet is being used to provide more information on the European Union, including shortly a public register of Council documents. The Commission, the Council and the European Parliament should prepare rapid implementation of the new provisions on openness in the Treaty of Amsterdam.

The European Council welcomes the Commission's use of the Internet to promote an effective dialogue with citizens and business on their single market rights and opportunities.

The European Council noted the outcome of the People's Europe 98 conference. It welcomed the participation of representatives from all parts and sections of society across Europe, and the conference's contribution to public debate. It encouraged future Presidencies and the Commission to promote such public debate.

The European Council invites the Council and the Member States to consider ideas to promote more contacts between young people, e.g. through the Internet, and the scope for tackling social exclusion among young people, including through sport.

XXII.

**Council conclusions
on openness and cooperation in the field of information
activities about the European Union
(6 December 1998)**

13314/1/98

**COUNCIL CONCLUSIONS ON OPENNESS AND COOPERATION
IN THE FIELD OF INFORMATION ACTIVITIES ABOUT THE EUROPEAN UNION**

1. The Council emphasises the need to bring Europe closer to its citizens, inter alia by stepping up information activities on European Union issues.

As for its own activities, it wants to play an active part in this effort and intends, among other things, to boost the facilities provided by its General Secretariat for journalists and the public at large in the area of electronic means (audiovisual facilities and Internet).

2. The Council reiterates the importance of the June 1999 elections to the European Parliament for the democratic legitimacy of the European Union.

With a view to raising awareness about the elections among European citizens, the Council recommends close cooperation among the information services of the Member States and of the institutions of the European Union.

3. The Council notes with satisfaction the entry into force on 1 January 1999 of the Council's public register of documents, accessible on the Internet (<http://ue.eu.int>), and will make public the calendar of all of its meetings.

4. The Council notes the Member States' responsibility for information about the European Union.

5. The Council recognises the Commission's role in promoting the interinstitutional cooperation in the field of information about the European Union.

6. The Council notes the Commission's intention to establish mechanisms to allow those in charge of information in the Member States and the EU institutions to exchange their experiences, communicate with each other and hold consultations concerning information about the European Union, and to report regularly on progress achieved.

7. The Council notes the Commission's intention to make suggestions for interinstitutional cooperation in this field, in particular with the European Parliament and the Council.

XXIII.

**Interinstitutional Agreement
on common guidelines for
the quality of drafting of Community legislation
(22 December 1998)**

13284/1/98 REV 1

**INTERINSTITUTIONAL AGREEMENT
OF 22 DECEMBER 1998
ON COMMON GUIDELINES
FOR THE QUALITY OF DRAFTING
OF COMMUNITY LEGISLATION**

THE EUROPEAN PARLIAMENT, THE COUNCIL OF THE EUROPEAN UNION AND THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to Declaration No 39 on the quality of the drafting of Community legislation adopted on 2 October 1997 by the Intergovernmental Conference and annexed to the Final Act of the Treaty of Amsterdam,

Whereas:

- (1) Clear, simple and precise drafting of Community legislative acts is essential if they are to be transparent and readily understandable by the public and economic operators. It is also a prerequisite for the proper implementation and uniform application of Community legislation in the Member States.
- (2) According to the case-law of the Court of Justice, the principle of legal certainty, which is part of the Community legal order, requires that Community legislation must be clear and precise and its application foreseeable by individuals. That requirement must be observed all the more strictly in the case of an act liable to have financial consequences and imposing obligations on individuals in order that those concerned may know precisely the extent of the obligations which it imposes on them.
- (3) Guidelines on the quality of drafting of Community legislation should therefore be adopted by common accord. These guidelines are intended as a guide for the Community institutions when they adopt legislative acts, and for those in the Community institutions who are involved in formulating and drafting such acts, whether at the stage of the initial text or that of the various amendments made to it in the course of the legislative procedure.
- (4) These guidelines should be accompanied by measures to make sure that they are applied properly, with each Institution adopting the relevant measures for its own use.
- (5) The role played by the Institutions' Legal Services, including their legal/linguistic experts, in improving the quality of drafting of Community legislative acts should be strengthened.
- (6) These guidelines complement the efforts being made by the Institutions to make Community legislation more accessible and easier to understand, particularly by means of the official codification of legislative acts, recasting and simplification of existing texts.
- (7) These guidelines are to be regarded as instruments for internal use by the Institutions. They are not legally binding.

ADOPT THESE GUIDELINES BY COMMON ACCORD:

General principles

1. Community legislative acts shall be drafted clearly, simply and precisely.
2. The drafting of Community acts shall be appropriate to the type of act concerned and, in particular, to whether or not it is binding (regulation, directive, decision, recommendation or other act).
3. The drafting of acts shall take account of the persons to whom they are intended to apply, with a view to enabling them to identify their rights and obligations unambiguously, and of the persons responsible for putting the acts into effect.
4. Provisions of acts shall be concise and their content should be as homogeneous as possible. Overly long articles and sentences, unnecessarily convoluted wording and excessive use of abbreviations should be avoided.
5. Throughout the process leading to their adoption, draft acts shall be framed in terms and sentence structures which respect the multilingual nature of Community legislation; concepts or terminology specific to any one national legal system are to be used with care.
6. The terminology used in a given act shall be consistent both internally and with acts already in force, especially in the same field.

Identical concepts shall be expressed in the same terms, as far as possible without departing from their meaning in ordinary, legal or technical language.

Different parts of the act

7. All Community acts of general application shall be drafted according to a standard structure (title – preamble – enacting terms – annexes, where necessary).
8. The title of an act shall give as succinct and full an indication as possible of the subject matter which does not mislead the reader as to the content of the enacting terms. Where appropriate, the full title of the act may be followed by a short title.
9. The purpose of the citations is to set out the legal basis of the act and the main steps in the procedure leading to its adoption.
10. The purpose of the recitals is to set out concise reasons for the chief provisions of the enacting terms, without reproducing or paraphrasing them. They shall not contain normative provisions or political exhortations.
11. Each recital shall be numbered.
12. The enacting terms of a binding act shall not include provisions of a non-normative nature, such as wishes or political declarations, or those which repeat or paraphrase passages or articles from the Treaties or those which restate legal provisions already in force.

Acts shall not include provisions which enunciate the content of other articles or repeat the title of the act.

13. Where appropriate, an article shall be included at the beginning of the enacting terms to define the subject-matter and scope of the act.
14. Where the terms used in the act are not unambiguous, they should be defined together in a single article at the beginning of the act. The definitions shall not contain autonomous normative provisions.
15. As far as possible, the enacting terms shall have a standard structure (subject-matter and scope – definitions – rights and obligations – provisions conferring implementing powers – procedural provisions – implementing measures – transitional and final provisions).

The enacting terms shall be subdivided into articles and, depending on their length and complexity, titles, chapters and sections. When an article contains a list, each item on the list should be identified by a number or a letter rather than an indent.

Internal and external references

16. References to other acts should be kept to a minimum. References shall indicate precisely the act or provision to which they refer. Circular references (references to an act or an article which itself refers back to the initial provision) and serial references (references to a provision which itself refers to another provision) shall also be avoided.
17. A reference made in the enacting terms of a binding act to a non-binding act shall not have the effect of making the latter binding. Should the drafters wish to render binding the whole or part of the content of the non-binding act, its terms should as far as possible be set forth as part of the binding act.

Amending acts

18. Every amendment of an act shall be clearly expressed. Amendments shall take the form of a text to be inserted in the act to be amended. Preference shall be given to replacing whole provisions (articles or subdivisions of articles) rather than inserting or deleting individual sentences, phrases or words.

An amending act shall not contain autonomous substantive provisions which are not inserted in the act to be amended.

19. An act not primarily intended to amend another act may set out, at the end, amendments of other acts which are a consequence of changes which it introduces. Where the consequential amendments are substantial, a separate amending act should be adopted.

Final provisions, repeals and annexes

20. Provisions laying down dates, time-limits, exceptions, derogations and extensions, transitional provisions (in particular those relating to the effects of the act on existing situations) and final provisions (entry into force, deadline for transposition and temporal application of the act) shall be drawn up in precise terms.

Provisions on deadlines for the transposition and application of acts shall specify a date expressed as day/month/year. In the case of directives, those deadlines shall be expressed in such a way as to guarantee an adequate period for transposition.

21. Obsolete acts and provisions shall be expressly repealed. The adoption of a new act should result in the express repeal of any act or provision rendered inapplicable or redundant by virtue of the new act.
22. Technical aspects of the act shall be contained in the annexes, to which individual reference shall be made in the enacting terms of the act and which shall not embody any new right or obligation not set forth in the enacting terms.

Annexes shall be drawn up in accordance with a standardised format.

THEY HEREBY AGREE ON THE FOLLOWING IMPLEMENTING MEASURES:

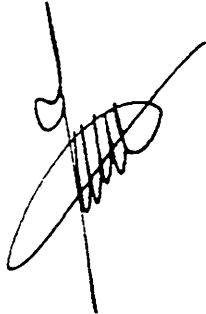
The Institutions shall take such measures relating to their internal organisation as they deem necessary in order to ensure that these guidelines are properly applied.

In particular, the Institutions:

- (a) shall instruct their Legal Services to draw up, within one year after the publication of these guidelines, a joint practical guide for persons involved in the drafting of legislation;
- (b) shall organise their respective internal procedures in such a way that their Legal Services, including their legal/linguistic experts, may, each for their own Institution, make drafting suggestions in good time, with a view to applying these guidelines;
- (c) shall foster the creation of drafting units within those bodies or departments within the Institutions which are involved in the legislative process;
- (d) shall ensure that their officials and other servants receive training in legal drafting, making them aware in particular of the effects of multilingualism on drafting quality;
- (e) shall promote cooperation with the Member States with a view to improving understanding of the particular considerations to be taken into account when drafting texts;
- (f) shall encourage the development and improvement of information technology tools for assisting legal drafting;
- (g) shall foster collaboration between their respective departments responsible for ensuring the quality of drafting;
- (h) shall instruct their respective Legal Services to draw up periodically, each for the institution to which it belongs, a report on the measures taken in pursuance of points (a) to (g).

Done at Brussels, 22 December 1998

For The European Parliament



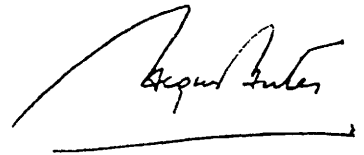
The President

For the Council
of the European Union



The President

For the Commission
of the European
Communities



The President

Declaration by the European Parliament

The European Parliament considers that Community legislative acts must be self-explanatory and that the institutions and/or Member States must not adopt explanatory statements.

No provision is made for the adoption of explanatory statements in the Treaties and it is incompatible with the nature of Community law.

Council statements

The Council finds it desirable that the general principles of good drafting which may be drawn from the Common Guidelines on the Quality of Drafting of Community Legislation serve, where appropriate, as an inspiration for the drafting of acts adopted pursuant to Titles V and VI and of the Treaty on European Union.

* * *

The Council considers that, in order that the transparency of the Community decision-making process may be improved, it would be desirable for the Commission to provide in future for the statements of reasons accompanying its legislative proposals to be widely circulated to the public by the most appropriate means (for example, publication in the "C" series of the Official Journal of the European Communities, electronic distribution, or other).

* * *

The Council takes the view that, in addition to the adoption by the legislator of official codification of legislative acts, the Office for Official Publications of the European Communities should, with a view to improving access to Community legislation when the latter has been subject to frequent or substantial amendments, intensify its work of informally consolidating legislative acts and should improve the advertising of the availability of these texts. It would also be useful to examine with the other institutions the appropriateness of possible measures aimed at facilitating a more structured use of the recasting technique which combines the codification and the modifications of an act in a single legislative text.

* * *

Like the European Parliament, the Council is of the opinion that legislative acts should be comprehensible in themselves. Recourse to statements interpreting legal acts should therefore be avoided where possible and the content of possible statements should, as appropriate, be included in the text of the act.

It should however be noted that insofar as they do not contradict the legislative act concerned and they are made public (as provided for in Article 151(3) of the EC Treaty as it will be amended by the Amsterdam Treaty), such interpretative statements adopted by the Community legislator are compatible with Community law.

Part II

Provisions in force relating to archives

I.

**Council Regulation No 354/83
concerning the opening to the public of the historical archives of the
European Economic Community and the
European Atomic Energy Community
(1 February 1983)**

OJ No L 43, 15.2.1983, pp. 1-3

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 1

1. 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 (1) of the Treaty establishing the European Economic Community and Article 3 (1) 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 representatives 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 132, 2. 6. 1981, p. 6.

⁽²⁾ OJ No C 327, 14. 12. 1981, 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

1. 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 31 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

1. 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

1. 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 procedures for the declassification, according to criteria adopted by common agreement, of documents and records.

Article 6

1. 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 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 and records that are to be preserved from those that have no administrative or historical value.

⁽¹⁾ OJ No 17, 6. 10. 1958, p. 406/58.

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 Member States and the other institutions to the extent that the Member State concerned is not the one in which the institution is situated or the institutions

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, 1 February 1983.

For the Council
The President
O. SCHLECHT

II.

**Commission Decision 359/83/ECSC
concerning the opening to the public of the historical archives
of the European Coal and Steel Community
(8 February 1983)**

OJ No L 43, 15.2.1983, pp. 14 and 15

COMMISSION DECISION No 359/83/ECSC

of 8 February 1983

concerning the opening to the public of the historical archives of the European Coal and Steel Community

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 opinion of the European Parliament ⁽¹⁾,

Having regard to the assent given unanimously by the Council,

Whereas, in carrying out its tasks, the European Coal and Steel Community has accumulated a vast collection of archives emanating from its institutions; whereas these archives constitute the property of the Community, which has legal personality;

Whereas some of the documents and records produced by the 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 it is standard practice both in Member States and in international organizations to make archives available to the public 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 provide guidance and assistance for the parties concerned in Community affairs and thereby contribute to the attainment of the Community's objectives; whereas, if the Community's objectives are to be attained, there should be common rules governing the opening of the Community's historical archives 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 Decision;

Whereas the general principles alone need to be determined, adoption of the requisite implementing rules, at internal level, being left to each institution,

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 30 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) '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 performance of their duties, 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 7 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 expiry of the 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 Decision does not apply to files concerning the Community's staff or to documents and records containing information on the private or professional life of individual persons.

⁽¹⁾ OJ No C 327, 14. 12. 1981, p. 45.

Article 3

1. The public shall not have access to 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

1. 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

1. For the sake of compliance with the 30-year rule provided for in Article 1 (1), each institution shall in good time, and no 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 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 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 lay down

procedures whereby documents and records may be declassified according to criteria adopted by common agreement.

Article 6

1. 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 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 and records that are to be preserved from those that have no administrative or historical value.

Article 8

1. Each institution may deposit its historical archives in whatever place it considers most appropriate.
2. Each institution shall, on request, supply the Member States and the other institutions, to the extent that the Member State concerned is not the one in which the institution is situated or that the institutions 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 Decision.

Article 9

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

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

Done at Strasbourg, 8 February 1983.

For the Commission

The President

Gaston THORN

III.

**Decision 682/96 of the Secretary-General of the Council
concerning the opening to the public of the historical archives
of the Council
(16 July 1996)**

SN 3704/96

**EUROPEAN UNION
THE COUNCIL**

The Secretary-General

DECISION No 682/96 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 the Council's Rules of Procedure, and in particular the second subparagraph of Article 21(2) thereof,

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

HAS ADOPTED THIS DECISION:

⁽¹⁾ OJ No L 43, 15.2.1983, p. 1-3.

⁽²⁾ OJ No L 43, 15.2.1983, p. 14-15.

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 Director responsible, empowered by the Secretary-General, and the archivist, empowered by the Director 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 documents or be disruptive shall be allowed into the archives.

Article 6

- (a) Requests for documents 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 documents. 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 documents which visitors may consult at any one time.
- (d) There shall be no charge for consulting documents.

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 documents 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 of the consulting room shall determine the number of copies authorized per day.
- (c) The official in charge, or any other official appointed by him, may refuse to make copies of certain documents if he considers this to be precluded by the condition or nature of the documents.

Article 9

- (a) Documents and copies must be requested no later than half an hour before closing time.
- (b) No documents or copies will be issued between 12.00 and 14.00.

Article 10

- (a) Visitors must exercise the utmost care when handling the documents consulted.
- (b) As soon as they have been consulted, documents 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 documents 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.

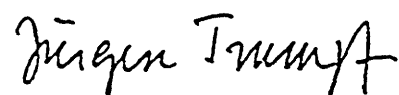
Article 13

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

Article 2

This Decision shall take effect on 1 August 1996.

Done at Brussels, 16 July 1996.



The Secretary-General
Jürgen TRUMPF

Part III

Provisions concerning openness and transparency in the Amsterdam Treaty (signed on 2 October 1997)

(OJ No C 340, 10.11.1997)

TITLE I

COMMON PROVISIONS

Article 1 (ex Article A)

By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called 'the Union'.

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.

The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty. Its task shall be to organise, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.

S e c t i o n 2

The Council

Article 207 (ex Article 151)

3. The Council shall adopt its Rules of Procedure.

For the purpose of applying Article 255(3), the Council shall elaborate in these Rules the conditions under which the public shall have access to Council documents. For the purpose of this paragraph, the Council shall define the cases in which it is to be regarded as acting in its legislative capacity, with a view to allowing greater access to documents in those cases, while at the same time preserving the effectiveness of its decision-making process. In any event, when the Council acts in its legislative capacity, the results of votes and explanations of vote as well as statements in the minutes shall be made public.

Article 255 (ex Article 191a)

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

2. General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 251 within two years of the entry into force of the Treaty of Amsterdam.

3. Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents.

DECLARATIONS ADOPTED BY THE CONFERENCE

35. DECLARATION ON ARTICLE 191a(1) OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY

The Conference agrees that the principles and conditions referred to in Article 191a(1) of the Treaty establishing the European Community will allow a Member State to request the Commission or the Council not to communicate to third parties a document originating from that State without its prior agreement.

39. DECLARATION ON THE QUALITY OF THE DRAFTING OF COMMUNITY LEGISLATION

The Conference notes that the quality of the drafting of Community legislation is crucial if it is to be properly implemented by the competent national authorities and better understood by the public and in business circles. It recalls the conclusions on this subject reached by the Presidency of the European Council in Edinburgh on 11 and 12 December 1992, as well as the Council Resolution on the quality of drafting of Community legislation adopted on 8 June 1993 (*Official Journal of the European Communities*, No C 166, 17.6.1993, p. 1).

The Conference considers that the three institutions involved in the procedure for adopting Community legislation, the European Parliament, the Council and the Commission, should lay down guidelines on the quality of drafting of the said legislation. It also stresses that Community legislation should be made more accessible and welcomes in this regard the adoption and first implementation of an accelerated working method for official codification of legislative texts, established by the Interinstitutional Agreement of 20 December 1994 (*Official Journal of the European Communities*, No C 102, 4.4.1996, p. 2).

Therefore, the Conference declares that the European Parliament, the Council and the Commission ought to:

- establish by common accord guidelines for improving the quality of the drafting of Community legislation and follow those guidelines when considering proposals for Community legislation or draft legislation, taking the internal organisational measures they deem necessary to ensure that these guidelines are properly applied;
- make their best efforts to accelerate the codification of legislative texts.

41. DECLARATION ON THE PROVISIONS RELATING TO TRANSPARENCY, ACCESS TO DOCUMENTS AND THE FIGHT AGAINST FRAUD

The Conference considers that the European Parliament, the Council and the Commission, when they act in pursuance of the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community, should draw guidance from the provisions relating to transparency, access to documents and the fight against fraud in force within the framework of the Treaty establishing the European Community.