

## 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

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

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.

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

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.