

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 8 February 1994

on public access to Commission documents

(94/90/ECSC, EC, Euratom)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Article 2

Having regard to the Treaties establishing the European Communities, and in particular Article 162 of the Treaty establishing the European Community,

Whereas, in accordance with the Declaration on the right of access to information annexed to the Final Act of the Treaty on European Union and with the conclusions of the Birmingham and Edinburgh European Councils on bringing the Community closer to its citizens, a code of conduct setting out the principles governing access to Commission and Council documents should be agreed upon with the Council;

Whereas these principles are based on the Commission's papers on public access to the institutions' documents of 5 May 1993 and openness in the Community of 2 June 1993;

Whereas specific provisions need to be adopted whereby the Commission can give effect to the code,

HAS DECIDED AS FOLLOWS:

Article 1

The code of conduct on public access to Commission documents set out in the Annex is adopted.

In order to ensure that effect is given to the code referred to in Article 1, the following measures are adopted:

1. All applications for access to documents shall be made in writing to the relevant Commission department at its headquarters, Commission Offices in the Member States or Commission Delegations in non-member countries.
2. The relevant Director-General or Head of Department, the Director designated for the purpose in the Secretariat-General or an official acting on their behalf shall inform the applicant in writing, within one month, whether the application is granted or whether he intends to refuse access. In the latter case the applicant shall also be notified that he has one month in which to apply to the Secretary-General of the Commission for review of the intention to refuse access, failing which he shall be deemed to have withdrawn his initial application.
3. The President shall be empowered to decide on applications for review in agreement with the relevant Member of the Commission. He may delegate this authority to the Secretary-General.
4. Failure to reply to an application for access to a document within one month of application being made constitutes an intention to refuse access.

Failure to reply within one month of an application for review being made constitutes a refusal.

5. A fee of ECU 10, plus ECU 0.036 per sheet of paper, shall be charged 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.

6. If an applicant wishes to consult a document on Commission premises, the relevant department shall try to make arrangements to accommodate him. Where the department is unable to provide appropriate facilities, the documents shall be consulted in either of the Commission's central libraries in Brussels and Luxembourg in any of the Commission's Offices

in the Member States or in any of its Delegations in non-member countries.

Article 3

This Decision will take effect from 15 February 1994. It will be published in the *Official Journal of the European Communities*.

Done at Brussels, 8 February 1994.

For the Commission

João PINHEIRO

Member of the Commission

ANNEX

Code of conduct concerning public access to Commission and Council documents

THE COMMISSION AND THE COUNCIL,

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 Commission and the Council 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 Commission or the Council.

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 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.

Where the document held by an institution was written by a natural or legal person, a Member State, another Community institution or body of 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 138c of the Treaty establishing the European Community.

Exceptions

The institutions will refuse access to any document where 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.