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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.04.2003
COM(2003) 244 final

2002/0203 (CNS)

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Amended proposal for a

COUNCIL REGULATION

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

On 19 August 2002 the Commission presented a proposal for a Council Regulation amending Regulation (EEC, Euratom) No 354/83 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community¹.

At its part-session of 11 March 2003 the European Parliament adopted a legislative resolution approving an amended version of the Commission proposal².

The Commission has decided to accept a large proportion of the amendments proposed by Parliament and accordingly presents an amended proposal.

¹ COM(2002) 462 final, 2002/0203 (CNS).

² Report submitted by Mr Oreja, PE 319.253.

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

THE COUNCIL OF THE EUROPEAN UNION,

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

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

Having regard to the proposal from the Commission,³

Having regard to the opinion of the European Parliament,⁴

Whereas:

- (1) Article 255 of the Treaty establishing the European Community gives any citizen of the Union and any natural or legal person residing or having its registered office in a Member State a right of access to European Parliament, Council and Commission documents.
- (2) The general principles and the limits governing the public's right of access to documents of the European Parliament, the Council and the Commission were laid down in European Parliament and Council Regulation (EC) No 1049/2001.⁵
- (3) The exceptions to public right of access provided for in Regulation (EC) No 1049/2001 are applicable for a maximum period of thirty years, irrespective of the place where the documents are stored. The exceptions relating to protection of privacy or commercial interests and the specific provisions on sensitive documents may, however, apply beyond that period if necessary.
- (4) Council Regulation (EEC, Euratom) No 354/83⁶ provides that the public will not be given access to certain categories of documents thirty years after the documents were created. Pursuant to Article 18(2) of Regulation (EC) No 1049/2001, it is necessary to bring these exceptions into line with the exceptions to right of access provided for in Regulation .

³ OJ L

⁴ OJ L

⁵ OJ L 145, 31.5.2001, p. 43.

⁶ OJ L 43, 15.2.1983, p. 1.

- (5) For the purposes of Regulation (EEC, Euratom) No 345/83, the European Economic and Social Committee, the Committee of the Regions and similar agencies and bodies set up by the Community legislature should henceforth be treated in the same way as the institutions referred to in Article 7(1) of the Treaty establishing the European Community.
- (6) Regulation No 354/83 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

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

- 1) Paragraph 1 of Article 1 is replaced by the following:

"1. This Regulation seeks to ensure that documents of historical or administrative value are preserved and made available to the public wherever possible. To that end, each institution of the European Community and of the European Atomic Energy Community (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 thirty years starting from the date of the creation of the document. This Regulation shall apply to the European Economic and Social Committee, the Committee of the Regions and similar agencies and bodies set up by the Community legislature."

Article 1(3) is replaced by the following :

"All documents available to the public before expiry of the period in paragraph 1 shall remain available without restriction."

- 2) Articles 2 and 3 are replaced by the following:

"Article 2

1. In the case of documents covered by the exception relating to privacy and the integrity of the individual, as defined in Article 4(1)(b) of Regulation (EC) No 1049/2001, and that relating to the business interests of an individual or firm, including intellectual property, as defined in the first indent of Article 4(2) of Regulation No 1049/2001, the exceptions may continue to apply to all or part of a document after this period if the relevant conditions for their application are satisfied.

2. Documents containing information on the private or professional life of individual persons, as defined in Article 4(1)(b) of Regulation (EC) No 1049/2001, including files of staff of the European Communities, shall be disclosed in accordance with Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies, and in particular Articles 4 and 5 thereof.

3. Before deciding to make available to the public documents which, if disclosed, could harm the commercial interests of a firm or individual, including those relating to intellectual property, as defined in the first indent of Article 4(2) of Regulation

(EC) No 1049/2001, the institution shall inform the firm or the person concerned, in accordance with the rules to be defined by each institution, of its intention to make the documents in question accessible to the public. The documents shall not be released if, taking account of the observations of the third parties, the institution considers that their disclosure could jeopardise such commercial interests, unless there is an overriding public interest in disclosure.

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

"Article 3

The public shall not have access to documents that have been classified in accordance with Article 10 of Council Regulation No 3 of 31 July 1958 implementing Article 24 of the Treaty establishing the European Atomic Energy Community,⁷ and have not been declassified."

3) Article 4 is deleted.

4) Article 6 is replaced by the following:

"Article 6

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

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

5) Article 9 is amended as follows :

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

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

⁷ OJ No 17, 6.10.1958, p. 406.

Article 2

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

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

Done at Brussels,

For the Council
The President