

Council Decision 93/731/EC on public access to Council documents (20 December 1993) — Consolidated version 2000

Caption: Consolidated version of the Decision of the Council of the European Union of 20 December 1993 on public access to Council documents, incorporating the amendments introduced by the Council Decision of 6 December 1996 and the Council Decision of 14 August 2000.

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Council Decision of 20 December 1993 on public access to Council documents (93/731/EC)

[Consolidated version incorporating the amendments introduced by Council Decision of 6 December 1996 (96/705/Euratom, ECSC, EC), OJ L 325 of 14.12.1996, p. 19 and Council Decision of 14 August 2000 (2000/527/EC), OJ L 212 of 23.08.2000, p. 9]

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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, except for documents classified as TRÈS SECRET/TOP SECRET, SECRET or CONFIDENTIEL within the meaning of the Decision of the Secretary-General of the Council/High Representative for Common Foreign and Security Policy of 27 July 2000 on measures for the protection of classified information applicable to the General Secretariat of the Council, on matters concerning the security and defence of the Union or of one or more of its Member States or on military or non-military crisis management, under the conditions laid down in this Decision.

Where a request for access refers to a classified document within the meaning of the first subparagraph, the applicant shall be informed that the document does not fall within the scope of 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.

3. Without prejudice to Article 1(1), no Council document on matters concerning the security and defence of the Union or of one or more of its Member States or on military or non-military crisis management which enables conclusions to be drawn regarding the content of classified information from one of the sources referred to in paragraph 2 may be made available to the public except with the prior written consent of the author of the information in question.

Where access to a document is refused pursuant to this paragraph, the applicant shall be informed thereof.

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/High Representative for Common Foreign and Security Policy (hereinafter referred to as 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, the security and defence of the Union or of one or more of its Member States, military or non-military crisis management, 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 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.

The Permanent Representatives Committee shall see to it that the necessary measures are taken to ensure that the preparation of such decisions is entrusted to persons authorised to take cognisance of the documents

concerned.

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 195 and 230 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.

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. The extension may be for two months where it is necessary to consult a source other than the Council, as provided in Article 2(3).

Article 8

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

Article 9

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

Article 10

This Decision shall take effect on 1 January 1994.

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