II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION
of 29 November 2001
amending the Council's Rules of Procedure

(2001/840/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 207(3) and Article 255(3) thereof,

Whereas:

(1) In accordance with Article 255(2) of the Treaty, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [1] defines the general principles, conditions and limits governing the right of access to documents provided for in Article 255(1) of the Treaty.

(2) Article 255(3) of the Treaty provides that the European Parliament, the Council and the Commission shall elaborate in their Rules of Procedure specific provisions regarding access to their documents.

(3) On the basis of its Rules of Procedure adopted by Decision 2000/396/EC, ECSC, Euratom [2], the Council has adopted a series of acts regarding access to its documents. Those acts should be consolidated in a single text incorporating, in an annex to the Rules of Procedure, both the unchanged provisions and the substantive amendments to those acts and new provisions which are to be made in accordance with Article 18 of Regulation (EC) No 1049/2001,

[1] OJ L 145, 31.5.2001, p. 43.
[2] OJ L 149, 23.6.2000, p. 21. Decision as amended by Decision 2001/216/EC (OJ L 81, 21.3.2001, p. 30).

HAS DECIDED AS FOLLOWS:

Article 1

The Council's Rules of Procedure are hereby amended as follows:

1. Article 10 shall be replaced by the following and the text of footnote 1 shall be deleted:

   'Article 10

   Public access to Council documents

   The specific provisions regarding public access to Council documents are set out in Annex III.';

2. Article 17(1)(g) shall be replaced by the following:

   '(g) international agreements concluded by the Community.

   Reference shall be made in the Official Journal to the entry into force of such agreements.';

3. the following point shall be added to Article 17(1):

   '(h) international agreements concluded in accordance with Article 24 of the Treaty on European Union, unless the Council decides otherwise on the grounds of Articles 4 and 9 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (*).

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

   (*) OJ L 145, 31.5.2001, p. 43.';

4. the following Annex shall be added:

'*ANNEX III*

SPECIFIC PROVISIONS REGARDING PUBLIC ACCESS TO COUNCIL DOCUMENTS

Article 1

Scope

Any natural or legal person shall have access to Council documents subject to the principles, conditions and limits laid down in Regulation (EC) No 1049/2001 and the specific provisions laid down in this Annex.

Article 2

Consultation as regards third-party documents

1. For the purpose of applying Article 4(5) and Article 9(3) of Regulation (EC) No 1049/2001 and unless it is clear, upon examination of the document in the light of Article 4(1), (2) and (3) of Regulation (EC) No 1049/2001, that it shall not be disclosed, the third party concerned shall be consulted if:

(a) the document is a sensitive document as defined in Article 9(1) of Regulation (EC) No 1049/2001;

(b) the document originates from a Member State and

— was submitted to the Council before 3 December 2001; or

— the Member State concerned requested that it not be disclosed without its prior agreement.

2. In all other cases, where the Council receives an application for a third-party document in its possession, the General Secretariat, for the purpose of applying Article 4(4) of Regulation (EC) No 1049/2001, shall consult the third party concerned unless it is clear, upon examination of the document in the light of Article 4(1), (2) and (3) of Regulation (EC) No 1049/2001, that it shall or shall not be disclosed.

3. The third party shall be consulted in writing (including by e-mail) and be given a reasonable time limit for its reply, taking into account the time limit laid down in Article 7 of Regulation (EC) No 1049/2001. In the cases referred to in paragraph 1, the third party shall be asked to give its opinion in writing.

4. Where the document does not fall within paragraph 1(a) or (b) and the General Secretariat, in the light of the third party's negative opinion, is not satisfied that Article 4(1) or (2) of Regulation (EC) No 1049/2001 is applicable, the Council shall be seized of the matter.

If the Council envisages the release of the document, the third party shall be informed immediately in writing of the Council's intention to release the document after a time period of at least 10 working days. At the same time, the third party's attention shall be drawn to Article 243 of the Treaty establishing the European Community.

Article 3

Requests for consultation received from other institutions or from Member States

Requests for consultations with the Council made by another institution or a Member State concerning an application for a Council document shall be sent via e-mail to access@consilium.eu.int or by fax to +32(0)2 285 6361.

The General Secretariat shall give its opinion on behalf of the Council promptly, taking into account any time limit required for a decision to be made by the institution or the Member State concerned, and at the latest within five working days.

Article 4

Documents originating from Member States

Any request by a Member State under Article 4(5) of Regulation (EC) No 1049/2001 shall be made in writing to the General Secretariat.

Article 5

Referral of requests by Member States

When a Member States refers to a request to the Council, it shall be handled in accordance with Articles 7 and 8 of Regulation (EC) No 1049/2001 and the relevant provisions of this Annex. In the event of a total or partial refusal of access, the applicant shall be informed that any confirmatory application must be addressed directly to the Council.

Article 6

Address for applications

Applications for access to a document shall be addressed in writing to the Secretary-General of the Council/High Representative, rue de la Loi/Wetstraat 175, B-1048 Brussels, by e-mail to access@consilium.eu.int or by fax to +32(0)2 285 6361.

Article 7

Processing of initial applications

Subject to Article 9(2) and (3) of Regulation (EC) No 1049/2001, any application for access to a Council document shall be handled by the General Secretariat.

Article 8

Processing of confirmatory applications

Subject to Article 9(2) and (3) of Regulation (EC) No 1049/2001, any confirmatory application shall be decided upon by the Council.

Article 9

Charges

The charges for producing and sending copies of Council documents shall be set by the Secretary-General.

Article 10

Public register of Council documents

1. The General Secretariat shall be responsible for providing public access to the register of Council documents.

2. In addition to the references to documents, it shall be indicated in the register which documents drawn up after 1 July 2000 have already been released to the public. Subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [1] and Article 16 of Regulation (EC) No 1049/2001, their content shall be made available on the Internet.

[1] OJ L 8, 12.1.2001, p. 1.

Article 11

Documents directly accessible to the public

1. This Article shall apply to all Council documents, provided that they are not classified and without prejudice to the possibility of making a written application in accordance with Article 6 of Regulation (EC) No 1049/2001.

2. For the purpose of this Article:

— "circulation" shall mean distribution of the final version of a document to the members of the Council, their representatives or delegates;

— "legislative document" shall mean any document concerning the examination and adoption of a legislative act within the meaning of Article 7 of the Council's Rules of Procedure.

3. The General Secretariat shall make the following documents available to the public as soon as they have been circulated:

(a) documents of which neither the Council nor a Member State is the author, which have been made public by their author or with his agreement;

(b) provisional agenda of meetings of the Council in its various formations;

(c) any text adopted by the Council and intended to be published in the *Official Journal of the European Communities*.

4. Provided that they are clearly not covered by any of the exceptions laid down in Article 4 of Regulation (EC) No 1049/2001, the General Secretariat may also make the following documents available to the public as soon as they have been circulated:

(a) provisional agenda of committees and working parties;

(b) other documents, such as information notes, reports, progress reports and reports on the state of discussions in the Council or one of its preparatory bodies which do not reflect individual positions of delegations, excluding Legal Service opinions and contributions.

5. The General Secretariat shall make the following legislative documents available to the public, in addition to the documents referred to in paragraphs 3 and 4, as soon as they have been circulated:

(a) cover notes and copies of letters concerning legislative acts addressed to the Council by other institutions or bodies of the European Union or, subject to Article 4(5) of Regulation (EC) No 1049/2001, by a Member State;

(b) notes submitted to Coreper and/or to the Council for approval ("I/A" and "A" Item notes), as well as the draft legislative acts to which they refer;

(c) decisions adopted by the Council during the procedure referred to in Article 251 of the EC Treaty and joint texts approved by the Conciliation Committee.

6. After adoption of one of the decisions referred to in paragraph 5(c) or final adoption of the act concerned, the General Secretariat shall make available to the public any legislative documents relating to this act which were drawn up before one of such decisions and which are not covered by any of the exceptions laid down in Article 4(1), (2) and (3), second subparagraph, of Regulation (EC) No 1049/2001, such as information notes, reports, progress reports and reports on the state of discussions in the Council or in one of its preparatory bodies ("outcomes of proceedings"), excluding Legal Service opinions and contributions.

At the request of a Member State, documents which are covered by the first subparagraph and reflect the individual position of that Member State's delegation in the Council shall not be made available to the public under these provisions.'

Article 2

The following acts are hereby repealed:

(a) Council Decision 93/731/EC of 20 December 1993 on public access to Council documents [1],

(b) Council Decision 2000/23/EC of 6 December 1999 on the improvement of information on the Council's legislative activities and the public register of Council documents [2],

(c) Council Decision 2001/320/EC of 9 April 2001 on making certain categories of Council documents available to the public [3].

Article 3

This Decision shall enter into force on 3 December 2001.

Done at Brussels, 29 November 2001.

For the Council

The President

M. VANDERPOORTEN

[1] OJ L 340, 31.12.1993, p. 43. Decision as last amended by Decision 2000/527/EC (OJ L 212, 23.8.2000, p. 9).

[2] OJ L 9, 13.1.2000, p. 22. Decision as amended by Decision 2000/527/EC.

[3] OJ L 111, 20.4.2001, p. 29.