Clarifying EC Regulations

Martin Cutts and Emma Wagner

Foreword by Peter Hain, Minister for Europe

How European Community regulations could be written more clearly so that citizens of Member States, including lawyers, would understand them better
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Miscellaneous
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Foreword

We need to explain the benefits of the European Union in plain English instead of “Eurospeak”. Most people are put off the European Union by the way it is presented. And they think that, if the EU’s language is so obscure and vague, the EU must either be the same or must have something to hide.

The European Commission has launched a ‘fight the fog’ campaign to encourage authors and translators to write more clearly, and the recent Seville European Council called for written Council conclusions to be concise and simplified. These initiatives are important. But there is still much work to be done to close the gap of understanding between Europe and its citizens.

This booklet shows how the presentation of one EC regulation could be improved by some plain drafting and by making some simple structural changes. The regulation itself deals with public access to EU documents, an essential part of recent efforts to improve the openness and transparency of EU decision-making. Although it became law in 2001, how well known is it among the public it is meant to serve?

One of the booklet's key proposals is the inclusion of a citizen's summary of new European laws, so that people don’t need to wade through the whole text to find out what it is about. Such citizen’s summaries would need to be clearly flagged, permanently attached to the regulations they summarise, and readily available online.

Plain Language Commission is doing valuable work in looking for ways to bring Europe closer to the people. Governments and technocrats need to convey information on Europe simply and straightforwardly. What goes on in Europe matters to all of us – it’s too important to be left to a European elite, communicating in insider jargon.

Peter Hain, Minister for Europe, July 2002
Achieving clarity in Eurolaw: how and why

Clarifying Eurolaw* showed how the EC directive on toy safety could be made easier to read and use. The booklet proposed that future directives should be:

• named, not just numbered – they should have a clear, short title;
• purposeful – stating early what they seek to achieve;
• easy to navigate – arranged so that people can easily find what they want;
• written clearly – to facilitate translation and transposition into national law;
• reasonably comprehensible to a citizen with an enquiring mind – not just to lawyers, politicians, and special-interest groups.

As well as these features, the rewritten directive had a citizen’s summary; an early statement of when it should be transposed into national law; and more than 30 extra headings. The booklet made several points in support of clear directives:

• Obscurity prevents people knowing whether any difference exists between what “Brussels” wants or intends, and what a country is trying to achieve in its transposition from Eurolaw to national law. National parliaments sometimes add extra provisions, knowing these can be blamed on “Brussels”; by the time these are implemented it is too late for citizens to counter them effectively.
• When people don’t know where they stand in relation to national law or Eurolaw, they must use professional advisers such as lawyers. This is too costly for many individuals and organizations, impeding their access to the law.
• People who do decide to consult lawyers still need to understand the issues themselves: it is they who instruct their lawyers, not vice versa. So they need a reasonable grasp of what the actual text of the law says.
• Legislators should regard their primary audience as interested private citizens, not lawyers. Law may never be written in the plainest of plain language, but it should at least be understandable to reasonably literate, motivated people.
• The complexity of directives arises more from weak choices of vocabulary, syntax and structure than from innately difficult content.

Responses to “Clarifying Eurolaw”

Neil Kinnock, Vice-President of the European Commission, welcomed the idea of citizen’s summaries:

Prefacing each European law with a “citizen’s summary” would automatically promote clarity and concision by giving the general reader an outline of what the piece of legislation says and what it is for in plain terms... The greatest source of immediate concern must be that explanations of the purpose and content of law, of policy and of decisions lack the necessary clarity. (Speech at Clear Writing Awards, Brussels 12.07.2001)

Peter Hain, the UK’s Minister for Europe, wrote:

I wholeheartedly support your aims [in the booklet]. We need plain speaking in Europe, in language that ordinary people can understand. I intend to write to ministerial colleagues and send them copies of your booklet... I am also looking for ways of taking forward your idea of a “citizen’s summary” for each new EU directive.” (Letter, 05.10.2001)

A thousand copies of the booklet were distributed to European Commission administrators, who produce the first drafts of EU legislation. Coincidentally, a Commission department was about to revise the toys directive and asked for permission to use parts of the rewritten version as a basis. The European

*Published in 2001. Available from Plain Language Commission, price £8 inc. UK postage or £10 inc. postage in other EU countries. The booklet can also be downloaded free of charge from our website, www.clearest.co.uk, under Books; and in translation from http://europa.eu.int/comm/translation/en/lifefog

“My starting point is that the EU is facing a huge problem: it is out of touch with its citizens.”
Guy Verhofstadt, Prime Minister of Belgium, 4 July 2001
Commission’s legal service responded unfavourably, saying that “[the] use of archaic language and legalese is not a serious problem in Community legislation” and that the choice of a directive from as early as 1988 was inappropriate (though of course it remains in force). The original directive was indeed written before the EU adopted new drafting rules*, but the booklet explained this at length, said the rules are not always followed, and in its rewritten directive applied much of the good practice set out in the rules. The legal service saw as a “false premise” the booklet’s statement that “legislators should regard the primary audience of every directive as interested private citizens, not lawyers”. This criticism is odd because the statement – which we regard more as an aspiration than a premise – seems so uncontroversial as to be a truism. We believe that doing the best you can to communicate directly with citizens – even if you don’t always succeed and even if few of them at present are listening – is the only good way of ensuring that legislation will be readily understood by other stakeholders. As the Law Commission of New Zealand’s legislative style manual (1996) says: “If new laws are to have broad public acceptance and enhance the quality of the statute book, they must ... be accessible and understandable.” Moreover, one important audience for Eurolaw are those private citizens – mostly without legal training – who also happen to have been elected to public office as MEPs.

Some critics said Clarifying Eurolaw should have examined an EC regulation rather than a directive, as regulations apply directly without adaptation by Member States. We have taken up that recommendation by preparing this booklet.

What information already exists for citizens?

Clarifying Eurolaw said acts should begin with citizen’s summaries:

Directives have few features that welcome ordinary citizens, who may suddenly find themselves on unfamiliar ground. A way of resolving this is to start all directives with a brief summary of the key points – a citizen’s summary. This would yield three advantages: it would give readers a quick overview of the main news; it would remind lawmakers of their ultimate audience and paymasters; [and] it would help journalists understand and convey the issues during the adoption process, when uncertainty is often fostered by rumour and deliberate misrepresentation.

Plenty of information is available to citizens – perhaps too much. Every piece of Eurolaw includes “recitals” setting out the reasons for the act (the whereas clauses that precede traditionally drafted acts). But reasons are not the same as effects, and they are far too diffuse. Press releases are issued by the Commission when new legislation is adopted. These are useful at the time of adoption, but they are not attached to the legislation so they are hard to unearth later. Official online sources give full accounts of all procedural details (dates of adoption etc). There are also many unofficial press releases and summaries of new legislation, often from pressure groups and political parties.

This profusion increases the need for a clearly designated citizen’s summary that would be short, easy to find, official and attached to the act. The source closest to this ideal already appears in the Commission’s own Bulletin – a monthly, online 300-page report summarising new adopted legislation in all the official languages. The Bulletin extract below** formed the basis of our citizen’s summary of the access regulation, though we had to add detail and clarification to make it useful. You may wish to compare it with the citizen’s summary on page 20.

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*Based on the interinstitutional agreement in EU Official Journal C73/99.


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[On jargon] “It is a therapeutic source of amusement and rage, just as long as you can assure yourself that others are to blame, and that this deplorable linguistic malady is quite beyond your own responsibility and control, like a disease that strikes only the uncleanly.”

Walter Nash, “Jargon: its uses and abuses”, 1993
The regulation aims to define the principles, conditions and limits (on grounds of public or private interest) governing the right of access to Parliament, Council and Commission documents provided for in Article 255 of the EC Treaty in such a way as to ensure the widest possible access to documents. It also aims to establish rules to ensure the easiest possible exercise of this right and to promote good administrative practice on access to documents. The regulation applies to all documents held by an institution, i.e. documents drawn up or received by it and in its possession, in all areas of activity of the European Union. Documents defined as 'sensitive' are subject to special treatment. With regard to exceptions, the institutions will be able to refuse access to a document where disclosure would undermine the protection of public interest (particularly as regards public security, defence and military matters, international relations, the financial policy of the Community or a Member State), the protection of privacy, the commercial interests of a natural or legal person, court proceedings, and inspections, investigations and audits, unless there is an overriding public interest in disclosure.

In order to make citizens' rights under this regulation effective, each institution is to provide public access to a register of documents. Access to the register should be provided in electronic form and should be operational by 3 June 2002. Applications for access to documents should be processed promptly (within 15 working days from registration of the application). In addition, each institution will publish annually a report for the preceding year including the number of cases in which the institution refused to grant access to documents, the reasons for such refusals and the number of sensitive documents recorded in the register.

In error, this states that public interest can override the institutions’ right to refuse disclosure on grounds of defence, economic policy, public security or individual privacy. This slip (compare Article 4 of the original regulation on page 12) shows that current regulations can mislead even insiders. However, well-written Bulletin extracts could become citizen’s summaries and be published with each act, preferably in a more obvious location than at present. The new explanatory notes to UK Acts of Parliament show that summaries are feasible, though they are not yet physically attached to Acts.*

**Diplomatic fog in Eurolaw**

Defenders of Eurolaw in its present form admit it is sometimes unclear, blaming politicians and national delegates for insisting on vague wording that wins consensus. A frequent refrain is, “Much useful Eurolaw would not have been made had clarity been essential.” Debatable though it is whether ambiguous law is better than none, it seems that in the cause of consensus, the certainty and precision claimed by Commission lawyers can be jettisoned. One apologist for diplomatic fog says:

> You have to bear in mind also that, for many of us, a fuzzy legal text is better than no text at all. If all but one of the Member States wants to achieve something and one Member State accepts this reluctantly, on condition that one or more of the provisions is fuzzily worded, it is better to go ahead in my view with the fuzzy wording, in the knowledge that (a) if there is a problem the European Court of Justice can sort it out; and (b) the reluctant Member State may come round in the end when the legislation is subsequently amended. This can be regarded as an aspect of Schuman’s building Europe upon “concrete achievements which first create a de facto solidarity”. There is also the fact that legal systems are complicated and often achieve the same result by completely different means. As a result, what appears to be straightforward wording can appear to have unwanted effects in a particular Member State, hence the need for fudging. (Unpublished email)

Certainly, national delegates may attend drafting negotiations with instructions to insist on a particular wording “or else my government will veto this proposal”, and that wording may be in a language of which they have only a limited grasp. So negotiations sometimes resemble diplomatic haggling, not precise legal drafting. Diplomats pride themselves on elegant fudging to paper the cracks in interna-
tional relations; but this cannot be the best way to write laws that have to be published in 11 equivalent language versions and affect some 370 million people.

**How Eurolaw is made**

Another problem is ownership of the result. Under the almost universal codecision procedure, Eurolaw is written in the following stages:

- **Initial drafting in the European Commission**, with discussion in committees before Commission Members adopt their final proposal.
- **More discussion in the European Parliament** (directly elected and representing the voters of Europe through political parties). Discussion and reports by the Parliament’s committees; finally, the Parliament votes on a series of amendments to the initial proposal, adopting some and rejecting others.
- **Concurrent discussion in the committees of the Council of the European Union** (representing the national governments of the Member States). After more discussion in the Commission, Parliament and Council committees, the draft Eurolaw is finally adopted by the Parliament and the Council.

Though hard to understand, this system is democratic and represents all legitimate interests. But it leaves a conundrum: who takes editorial responsibility for this piece of Eurolaw and any mistakes, inconsistencies or imperfect wording? The answer is nobody: after adoption, the law becomes an orphan. The Commission blames the Parliament and Council, the Parliament blames the Council and Commission. If problems ensue, the European Court of Justice will try to untangle the confusion and work out what the legislators really intended.

**How Eurolaw could be made better**

Eurocrats must not interfere with decisions by national delegates and politicians, so they cannot “improve” the wording of a text after its adoption by the Council. But a distinction could be made between substance, which is sacrosanct, and form, which is improvable. The time is surely ripe to create a supra-institutional legal drafting service to advise on clear writing during negotiations, and then (pre-enactment) to improve the form after politicians have fixed the substance. Such a single service – replacing the current three legal-linguistic services – would clarify editorial ownership.

We also think the Commission should state simply its goals for every piece of Eurolaw before drafting begins. On these would be based its explanatory memorandum. At present, the other institutions can sometimes be unsure of the goals.

**Rewriting a regulation**

To show what is possible when clarity is a central goal, we have taken Regulation (EC) No 1049/2001 “regarding public access to European Parliament, Council and Commission documents”, rewritten and reorganized it, and added a citizen’s summary. Our commentary on the original text is on pages 9-17. We believe the meaning of the rewrite is substantially equivalent to that of the original, though exact equivalence is rarely possible in such exercises. The purpose of the rewrite is to show what might be achieved by drafters of future regulations who understood their subject matter thoroughly, were they to apply good drafting practices.
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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION.

Having regard to the Treaty establishing the European Community, and in particular Article 253(2) thereof,

Having regard to the proposal from the Commission (1),

Acting in accordance with the procedure referred to in Article 251 of the Treaty (2),

Whereas:

(1) The second subparagraph of Article 1 of the Treaty on European Union enshrines the concept of openness, stating that the Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

(2) Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system. Openness contributes to strengthening the principles of democracy and respect for fundamental rights as laid down in Article 6 of the EU Treaty and in the Charter of Fundamental Rights of the European Union.

(3) The conclusions of the European Council meetings held at Birmingham, Edinburgh and Copenhagen stressed the need to introduce greater transparency into the work of the Union institutions. This Regulation consolidates the initiatives that the institutions have already taken with a view to improving the transparency of the decision-making process.

(4) The purpose of this Regulation is to give the fullest possible effect to the right of public access to documents and to lay down the general principles and limits on such access in accordance with Article 253(2) of the EC Treaty.

(5) Since the question of access to documents is not covered by provisions of the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community, the European Parliament, the Council and the Commission should, in accordance with Declaration No 41 attached to the Final Act of the Treaty of Amsterdam, draw guidance from this Regulation as regards documents concerning the activities covered by those two Treaties.

(6) Wider access should be granted to documents in cases where the institutions are acting in their legislative capacity, including under delegated powers, while at the same time preserving the effectiveness of the institutions' decision-making process. Such documents should be made directly accessible to the greatest possible extent.

(7) In accordance with Articles 28(1) and 41(1) of the EU Treaty, the right of access also applies to documents relating to the common foreign and security policy and to police and judicial cooperation in criminal matters. Each institution should respect its security rules.

(8) In order to ensure the full application of this Regulation to all activities of the Union, all agencies established by the institutions should apply the principles laid down in this Regulation.

(9) On account of their highly sensitive content, certain documents should be given special treatment. Arrangements for informing the European Parliament of the content of such documents should be made through interinstitutional agreement.

(10) In order to bring about greater openness in the work of the institutions, access to documents should be granted by the European Parliament, the Council and the Commission not only to documents drawn up by the institutions, but also to documents received by them. In this context, it is recalled that Declaration No 35 attached to the Final Act of the Treaty of Amsterdam provides that a Member State may request the Commission or the Council not to communicate to third parties a document originating from that State without its prior agreement.

(11) In principle, all documents of the institutions should be accessible to the public. However, certain public and private interests should be protected by way of exceptions. The institutions should be entitled to protect their internal consultations and deliberations where necessary to safeguard their ability to carry out their tasks. In assessing the exceptions, the institutions should take account of the principles in Community legislation concerning the protection of personal data, in all areas of Union activities.

(12) All rules concerning access to documents of the institutions should be in conformity with this Regulation.

(1) OJ C 177 E, 27.6.2000, p. 70.
Original access regulation: text and commentary

The paragraph numbers below correspond to the green boxes in the regulation text on the left.

The original and revised regulations are reproduced at 95% actual size to fit this booklet’s page layout.

1 The regulation lacks a title that is clear, short and speakable, although the existing title does at least say what the regulation is about. Contrary to good practice throughout the business world there is no summary of essential points, which would enable people to get a quick grasp of the main facts. Nor is there a contents list, which would help people to find their way around the document quickly and easily. Both these things are easy to prepare. Indeed, as we mention earlier, a summary of sorts is published at the same time as the regulation, but no-one would know it just from reading this document.

2 Thereof is archaic.

3 The preamble adopts an old-style legalistic approach and unfeasible punctuation. The three phrases of preamble begin with capital letters and end with commas. This leads to a single capitalized Whereas followed by a colon. Then there are 17 numbered “recitals” that set out the reasons for the measure. Yet only the initiated would know these are the reasons, as there isn’t any heading. Each recital begins with a capital and ends with a stop, until the final one, which ends with a comma leading to the phrase HAVE ADOPTED THIS REGULATION. The grammatical subject of have adopted is nearly a page and a half away, emphasizing the artificiality and oddity of this type of construction. There is no legal reason (apart from precedent) why the material is arranged in this way.

4 The 17 recitals run for 870 words and lack headings. Headings would force authors to group like with like, enabling readers to find the point they were interested in without having to read everything. Headings would also help readers to be confident they had read all that was relevant to an issue. Of course, the addition of headings would only worsen the effect of the present punctuation and structure, were they to be retained.

5 Generally the recitals use short sentences, which is helpful.

6 This includes the first of nine references in the recitals to “the institutions”, but there is no explanation of what these are until the Articles begin. (Insiders would know that the institutions are listed beneath the regulation’s title.) Any outsider wanting to grasp quickly what the recitals were saying would be put off by this lack of explanation.

7 This long sentence could easily be split by stating an initial proposition (by removing since), then using a connecting word at the start of the second sentence.

8 In order is often superfluous, as it is here and in recitals 10, 13 and 14.
(13) In order to ensure that the right of access is fully respected, a two-stage administrative procedure should apply, with the additional possibility of court proceedings or complaints to the Ombudsman.

(14) Each institution should take the measures necessary to inform the public of the new provisions in force and to train its staff to assist citizens exercising their rights under this Regulation. In order to make it easier for citizens to exercise their rights, each institution should provide access to a register of documents.

(15) Even though it is neither the object nor the effect of this Regulation to amend national legislation on access to documents, it is nevertheless clear that, by virtue of the principle of loyal cooperation which governs relations between the institutions and the Member States, Member States should take care not to hamper the proper application of this Regulation and should respect the security rules of the institutions.

(16) This Regulation is without prejudice to existing rights of access to documents for Member States, judicial authorities or investigative bodies.

(17) In accordance with Article 255(3) of the EC Treaty, each institution lays down specific provisions regarding access to its documents in its rules of procedure. Council Decision 93/731/EC of 20 December 1993 on public access to Council documents (1), Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents (2), European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents (3), and the rules on confidentiality of Schengen documents should therefore, if necessary, be modified or be repealed.

HAVE ADOPTED THIS REGULATION:

Article 2

Beneficiaries and scope

1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.

2. The institutions may, subject to the same principles, conditions and limits, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.

3. This Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union.

4. Without prejudice to Articles 4 and 9, documents shall be made accessible to the public either following a written application or directly in electronic form or through a register. In particular, documents drawn up or received in the course of a legislative procedure shall be made directly accessible in accordance with Article 12.

5. Sensitive documents as defined in Article 9(1) shall be subject to special treatment in accordance with that Article.

6. This Regulation shall be without prejudice to rights of public access to documents held by the institutions which might follow from instruments of international law or acts of the institutions implementing them.

Article 3

Definitions

For the purpose of this Regulation:

(a) 'document' shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility;

(b) 'third party' shall mean any natural or legal person, or any entity outside the institution concerned, including the Member States, other Community or non-Community institutions and bodies and third countries.
Recital 15 is tortuous, with numerous conjunctions and negatives (even though, neither, nor, nevertheless, not), an embedded clause (by virtue of the principle of loyal cooperation which governs relations between the institutions and the Member States), and a sentence length of 67 words. Our alternative removes most of the conjunctions and negatives, and uses a bullet list:

15 This Regulation does not amend or seek to amend national legislation on access to documents, but the principle of loyal cooperation that governs relations between the institutions and the Member States means that Member States should:

(a) take care not to hamper the proper application of this Regulation; and
(b) respect the security rules of the institutions.

Without prejudice is legalese; does not affect would seem to mean the same here.

Taken sentence by sentence, the recitals are reasonably clear. But their main failings are that they have not been grouped under headings and that the strange punctuation has given them a legalistic smell. As the recitals are primarily background information, it would be better to put them in a subsidiary position, at the end of the regulation.

In Article 1 the purpose is clearly stated, though hereinafter is archaic.

Shall is much used here and in the other Articles, to denote obligation. Must is a more modern legal alternative that lacks the potential ambiguities of shall. As explained in Clarifying Eurolaw, “In modern British conversational English (and even in most formal writing), shall has lost its association with obligation. Shall is becoming unusual even in the simple future tense, except in questions. Most speakers of British English use only will in the future tense. When imposing an obligation, must is now preferable. It is becoming more common in British law, where shall and must seem to be used interchangeably. The New Zealand Law Commission offers a convincing line of argument:

May should be used where a power, permission, benefit or privilege given to some person may but need not be exercised: exercise is discretionary. Must should be used where a duty is imposed which must be performed. Although shall is used to impose a duty or a prohibition, it is also used to indicate the future tense. This can lead to confusion. Shall is less and less in common usage, partly because it is difficult to use correctly. Use must instead of shall: it is clear and definite, and commonly understood. Shall and must are often used unnecessarily in declarative expressions, in an attempt to capture a sense of authority and obligation. In this situation, the present tense is often more appropriate. (Law Commission of New Zealand, Legislation manual: structure and style, 1996)”

Other authorities also favour must for obligation. Butt and Castle* list the many legal cases where shall has required judicial interpretation because of its twin dichotomies of futurity–precondition and direction–obligation. Almost suggesting the abandonment of shall in legal documents, Butt and Castle say: “The differing senses of shall point up the dangers inherent in its uncritical use.”

Though this section is definitional, other Articles give definitions (Articles 1 and 9). In short documents whose definitions apply throughout, it is usually better to group all the definitions in one place for ease of reference.

*Modern Legal Drafting, P Butt and R Castle, Cambridge University Press 2001
Article 4

Exceptions

1. The institutions shall refuse access to a document where disclosure would undermine the protection of:

(a) the public interest as regards:
   — public security,
   — defence and military matters,
   — international relations,
   — the financial, monetary or economic policy of the Community or a Member State,

(b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

2. The institutions shall refuse access to a document where disclosure would undermine the protection of:

— commercial interests of a natural or legal person, including intellectual property,
— court proceedings and legal advice,
— the purpose of inspections, investigations and audits,

unless there is an overriding public interest in disclosure.

3. Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.

4. As regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed.

5. A Member State may request the institution not to disclose a document originating from that Member State without its prior agreement.

6. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.

7. The exceptions as laid down in paragraphs 1 to 3 shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. In the case of documents covered by the exceptions relating to privacy or commercial interests and in the case of sensitive documents, the exceptions may, if necessary, continue to apply after this period.

Article 5

Documents in the Member States

Where a Member State receives a request for a document in its possession, originating from an institution, unless it is clear that the document shall or shall 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.

Article 6

Applications

1. Applications for access to a document shall be made in any written form, including electronic form, in one of the languages referred to in Article 314 of the EC Treaty and in a sufficiently precise manner to enable the institution to identify the document. The applicant is not obliged to state reasons for the application.

2. If an application is not sufficiently precise, the institution shall ask the applicant to clarify the application and shall assist the applicant in doing so, for example, by providing information on the use of the public registers of documents.

3. In the event of an application relating to a very long document or to a very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution.

4. The institutions shall provide information and assistance to citizens on how and where applications for access to documents can be made.

Article 7

Processing of initial applications

1. An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. Within 15 working days from registration of the application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal and inform the applicant of his or her right to make a confirmatory application in accordance with paragraph 2 of this Article.

2. In the event of a total or partial refusal, the applicant may, within 15 working days of receiving the institution’s reply, make a confirmatory application asking the institution to reconsider its position.
15 The headings to Articles 4 and 6 are not explicit enough: “Exceptions” to what? “Applications” for what? Explanatory headings help readers to find the information they want and to predict what will come next. Good prediction is essential to accurate and rapid reading.

16 The Regulation often uses where when if would seem more sensible. Where has strong connotations of place, but if helps readers to predict conditionality.

17 Article 4 paragraphs (2) and (3) are about refusal of access – apparently always by the institutions – unless there is an overriding public interest in disclosure. Paragraph (2) uses active voice with The institutions as agent, but paragraph (3) lacks an agent for its twice-used main verb shall be refused. It’s hard to know whether these structural differences are intended. The apparent similarity of the points being made, however, suggests that the three sentences in paragraphs (2) and (3) could be constructed in a similar way, which would help the readers. Our rewritten version (in Article 5) suggests the following approach:

2 Unless there is an overriding public interest in disclosure, an institution must refuse access to a document:
(a) if its disclosure would undermine the protection of –
   (i) commercial interests of a natural or legal person, including intellectual property;
   (ii) court proceedings and legal advice;
   (iii) the purpose of inspections, investigations and audits; or
(b) that the institution has drawn up for internal use or received on a matter which has not yet been decided, if disclosure would seriously undermine its decision-making process; or
(c) that contains opinions for the institution’s internal use as part of its deliberations and preliminary consultations, even after the decision has been taken, if disclosure would seriously undermine its decision-making process.

18 In several places, the language could be simpler without loss of meaning:
sufficiently precise manner = precise enough way;
is not obliged = need not;
assist the applicant in doing so = help the applicant do so;
in the event of = if.

19 The 66-word sentence in Article 7(1) is an obvious candidate for a vertical list:

1 An institution must promptly register an application for access to a document and must send the applicant an acknowledgement. Within 15 working days after registering the application, the institution must:
(a) grant access to the document requested and provide access in accordance with Article 11 within that period; or
(b) in a written reply, totally or partly refuse (stating why) and inform the applicant of his or her right to make a follow-up application in accordance with paragraph 4.
3. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time-limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

4. Failure by the institution to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.

Article 8

Processing of confirmatory applications

1. A confirmatory application shall be handled promptly. Within 15 working days from registration of such an application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal. In the event of a total or partial refusal, the institution shall inform the applicant of the remedies open to him or her, namely instituting court proceedings against the institution and/or making a complaint to the Ombudsman, under the conditions laid down in Articles 210 and 195 of the EC Treaty, respectively.

2. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

3. Failure by the institution to reply within the prescribed time limit shall be considered as a negative reply and entitle the applicant to institute court proceedings against the institution and/or make a complaint to the Ombudsman, under the relevant provisions of the EC Treaty.

Article 9

Treatment of sensitive documents

1. Sensitive documents are documents originating from the institutions or the agencies established by them, from Member States, third countries or International Organisations, classified as 'TRES SECRET/TOPI SECRET', 'SECRET' or 'CONFIDENTIEL' in accordance with the rules of the institution concerned, which protect essential interests of the European Union or of one or more of its Member States in the areas covered by Article 4(1)(e), notably public security, defence and military matters.

2. Applications for access to sensitive documents under the procedures laid down in Articles 7 and 8 shall be handled only by those persons who have a right to acquaint themselves with those documents. These persons shall also, without prejudice to Article 11(2), assess which references to sensitive documents could be made in the public register.

3. Sensitive documents shall be recorded in the register or released only with the consent of the originator.

4. An institution which decides to refuse access to a sensitive document shall give the reasons for its decision in a manner which does not harm the interests protected in Article 4.

5. Member States shall take appropriate measures to ensure that when handling applications for sensitive documents the principles in this Article and Article 4 are respected.

6. The rules of the institutions concerning sensitive documents shall be made public.

7. The Commission and the Council shall inform the European Parliament regarding sensitive documents in accordance with arrangements agreed between the institutions.

Article 10

Access following an application

1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, including, where available, an electronic copy, according to the applicant's preference. The cost of producing and sending copies may be charged to the applicant. This charge shall not exceed the real cost of producing and sending the copies. Consultation on the spot, copies of less than 20 A4 pages and direct access in electronic form or through the register shall be free of charge.

2. If a document has already been released by the institution concerned and is easily accessible to the applicant, the institution may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document.

3. Documents shall be supplied in an existing version and format (including electronically or in an alternative format such as Braille, large print or tape) with full regard to the applicant's preference.

Article 11

Registers

1. To make citizens' rights under this Regulation effective, each institution shall provide public access to a register of documents. Access to the register should be provided in electronic form. References to documents shall be recorded in the register without delay.

2. For each document the register shall contain a reference number (including, where applicable, the interinstitutional reference), the subject matter and/or a short description of the content of the document and the date on which it was received or drawn up and recorded in the register. References shall be made in a manner which does not undermine protection of the interests in Article 4.

3. The institutions shall immediately take the measures necessary to establish a register which shall be operational by 3 June 2002.
Provided that is legalese. Here, it merely means but.

This is an example of a “nouny” sentence that would be better expressed using vigorous verbs, eg: If the institution does not reply within the prescribed time-limit, the applicant may make a confirmatory application. The same nouny structure is used in Article 8(3).

This is an example of high-register vocabulary producing odd effects: instituting court proceedings against the institution. This inelegant construction is repeated in Article 8(3).

This 69-word sentence is a definition and should be in Article 3. Though it seems a candidate for splitting into a vertical list, this is not, in fact, worth the effort.

Instead of acquaint themselves, most writers and speakers of modern English use read. In this case, those persons probably means natural persons, so people seems the appropriate term.

Here and in several other places, the authors miss the opportunity to use that great glory of English concision, the possessive apostrophe: hence, the consent of the originator; the objectives of this Regulation; and the rules of the institutions.

This column of text is in clear language though the vocabulary could be simpler in places, and the first sentence of Article 11(2) is a candidate for a vertical list – as in our Article 12(2), below:

For each document the register must contain:

(a) a reference number (including, where applicable, the interinstitutional reference);
(b) the subject matter or a short description of the contents (or both); and
(c) the date it was received or drawn up and recorded in the register.

What can be said at all, can be said clearly.

Ludwig Wittgenstein, “Tractatus logico-philosophicus”, 1922
Article 12

Direct access in electronic form or through a register

1. The institutions shall as far as possible make documents directly accessible to the public in electronic form or through a register in accordance with the rules of the institution concerned.

2. In particular, legislative documents, that is to say, documents drawn up or received in the course of procedures for the adoption of acts which are legally binding in or for the Member States, should, subject to Articles 4 and 9, be made directly accessible.

3. Where possible, other documents, notably documents relating to the development of policy or strategy, should be made directly accessible.

4. Where direct access is not given through the register, the register shall as far as possible indicate where the document is located.

Article 13

Publication in the Official Journal

1. In addition to the acts referred to in Article 254(1) and (2) of the EC Treaty and the first paragraph of Article 163 of the Euratom Treaty, the following documents shall, subject to Articles 4 and 9 of this Regulation, be published in the Official Journal:

(a) Commission proposals;

(b) common positions adopted by the Council in accordance with the procedures referred to in Articles 251 and 252 of the EC Treaty and the reasons underlying those common positions, as well as the European Parliament’s positions in these procedures;

(c) framework decisions and decisions referred to in Article 34(2) of the EU Treaty;

(d) conventions established by the Council in accordance with Article 34(2) of the EU Treaty;

(e) conventions signed between Member States on the basis of Article 293 of the EC Treaty;

(f) international agreements concluded by the Community or in accordance with Article 24 of the EU Treaty.

2. As far as possible, the following documents shall be published in the Official Journal:

(a) initiatives presented to the Council by a Member State pursuant to Article 67(1) of the EC Treaty or pursuant to Article 34(2) of the EU Treaty;

(b) common positions referred to in Article 34(2) of the EU Treaty;

(c) directives other than those referred to in Article 254(1) and (2) of the EC Treaty, decisions other than those referred to in Article 254(1) of the EC Treaty, recommendations and opinions.

3. Each institution may in its rules of procedure establish which further documents shall be published in the Official Journal.

Article 14

Information

1. Each institution shall take the requisite measures to inform the public of the rights they enjoy under this Regulation.

2. The Member States shall cooperate with the institutions in providing information to the citizens.

Article 15

Administrative practice in the institutions

1. The institutions shall develop good administrative practices in order to facilitate the exercise of the right of access guaranteed by this Regulation.

2. The institutions shall establish an interinstitutional committee to examine best practice, address possible conflicts and discuss future developments on public access to documents.

Article 16

Reproduction of documents

This Regulation shall be without prejudice to any existing rules on copyright which may limit a third party’s right to reproduce or exploit released documents.

Article 17

Reports

1. Each institution shall publish annually a report for the preceding year including the number of cases in which the institution refused to grant access to documents, the reasons for such refusals and the number of sensitive documents not recorded in the register.

2. At the latest by 31 January 2004, the Commission shall publish a report on the implementation of the principles of this Regulation and shall make recommendations, including, if appropriate, proposals for the revision of this Regulation and an action programme of measures to be taken by the institutions.
This Article adopts several features that militate against smooth reading:

(a) In paragraph (1), as far as possible is an embedded subclause, while in paragraph (3) a similar phrase, where possible, is promoted to the start of the sentence. Where possible, it is better to treat similar elements in similar ways.

(b) In paragraph (2), the use of a long embedded subclause – that is to say...Articles 4 and 9 – unduly separates the agent from its verb. Compare the revision:

(c) Paragraphs (3) and (4) use where instead of if to denote conditionality. This is undesirable, for the reasons given earlier.

28 Article 13 is fairly straightforward, though there is a sudden outbreak of the quaint pursuant to in paragraph (2).

29 In general the text is unexceptionable if somewhat quaint:

- requisite measures = necessary measures;
- the rights they enjoy = their rights;
- this Regulation shall be without prejudice to any existing rules = this Regulation does not prejudice any existing rules.

30 Paragraphs (2) and (3) of Article 18 begin with the same phrase, Within six months of the entry into force of this Regulation, the Commission shall examine the conformity of... Clearly this phrase could be lifted out to become the platform statement to a vertical list, reducing the amount of repetition.
Rewritten regulation: commentary and text

Main features

The rewritten regulation (shown on pages 19-26) has the following main features:

• a short and memorable title – point 1 on page 19;
• a contents list – point 2;
• a citizen’s summary keyed to the relevant Articles by sidenotes – point 3;
• an early statement of purpose – point 4;
• an early statement of when the regulation comes into force instead of leaving this to the end, as in the original – point 5;
• definitions grouped in one place 6;
• reasonably clear English using, as far as possible, everyday words, short sentences and simple word order – see point 7, for example;
• bullet-point lists used extensively 8, since many of the provisions set out administrative procedures;
• related points grouped under headings, as in the “reasons” section, where we have introduced 14 extra headings – point 9.

Exact equivalence?

As Clarifying Eurolaw said, exact equivalence is rarely possible in a comprehensive rewrite – there are always slight gains or losses of meaning, but we have tried to minimise these to avoid accusations of simplifying the content while clarifying the form. We have carefully checked the text against the original, and believe it to have substantially equivalent meaning. (In many places, in fact, we have retained chunks of original wording.) Even if the content is inaccurate in some respects, however, the point of the exercise is to show what could be achieved by masters of the topic were they to adopt the revised regulation’s structure and style.

The revision has a very different structure from the original, with more headings and a radically altered order. The most noticeable change is shunting the recitals to the end – not that they don’t matter, but they are essentially background facts of little concern to most people once the legislation is enacted.

Comments on this booklet

We’d welcome your comments on the revised regulation (to the authors at the address on the back cover). It would help if EU bodies (eg the institutions’ legal services) could differentiate, in their comments and criticisms, between:

• proposed improvements, such as contents lists, that are compatible with current EU practice and ought perhaps to be made mandatory (at present they are used only “where appropriate” which in effect means “hardly ever”);
• proposed improvements that require a fundamental change to present practice, such as adding a citizen’s summary; placing the citations (Having regard to...) into a section headed Legal basis and procedure; and converting the recitals (Whereas...) into Reasons and moving them to the end of the act.

We’d also welcome reactions to our specific proposals: to use the Bulletin extracts as a basis for citizen’s summaries (page 5); to set up a single supra-institutional legal drafting service (page 7); and to obtain a statement of intentions from the Commission (page 7).
Access to EU Documents Regulation

Regulation (EC) No 1049/2001
of the European Parliament and of the Council
30 May 2001
Revised in April 2002 by Plain Language Commission
on public access to European Parliament, Council and Commission
documents

Contents
Legal basis and procedure

Articles
1 Purpose
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Reasons
CITIZEN’S SUMMARY

Purpose of Regulation

1 The Regulation defines the principles, conditions and limits governing the right of access to certain EU documents in a way that ensures the widest possible access to them. The right of access is based on Article 255 of the EC Treaty.

2 The Regulation establishes rules to ensure the easiest possible exercise of this right and to promote good administrative practice on access to documents. See Article 1

Who has the right of access?

3 The right of access applies to citizens of EU Member States, other people residing in those states, and legal persons – such as companies – whose registered offices are in those states. Art. 4

4 Each EU institution – namely the European Parliament, Council and Commission – must inform citizens of their rights under the Regulation, and Member States must cooperate with institutions in informing citizens. Art. 15

What documents are covered?

5 The Regulation applies to all documents drawn up or received by an institution and in its possession, in all areas of EU activity. However, an institution must refuse access if disclosure would undermine the protection of an individual’s privacy or of public interest as regards security, defence and military matters, international relations, or the financial policy of the Community or a Member State. Art. 4, 5

6 Unless there is an overriding public interest in disclosure, an institution must refuse access to a document if disclosure would undermine the protection of commercial interests; court proceedings; and the purposes of inspections, investigations and audits. Documents about public security, defence and military matters get special treatment. Art. 5, 10

Provision of public access

7 Each institution must provide public access to a register of documents. Access to the register should be provided in electronic form and be available by 3 June 2002. Art. 12

8 A person must apply for access in writing, which includes electronic form. The applicant need not give reasons. If an institution provides direct electronic access or supplies fewer than 20 A4 pages, it may not make a charge. Charges may not exceed the real cost of producing and sending copies. Art. 7, 11

9 Applications for access to documents should normally be processed promptly – within 15 working days from registration of the application. Art. 8

Reporting

10 Each institution will publish annually a report for the previous year including the number of cases in which it refused to grant access to documents, giving reasons. Art. 18

Status of the citizen's summary

11 This summary is for the interested general reader only. It has no legal effect.
LEGAL BASIS AND PROCEDURE

The European Parliament and the Council of the European Union have adopted this Regulation:

(a) on the basis of Article 255(2) of the Treaty establishing the European Community;

(b) after considering the proposal from the Commission(1);

(c) in accordance with the procedure referred to in Article 251 of the Treaty(2).

ARTICLES

Article 1
Purpose

The purpose of this Regulation is:

(a) to define the principles, conditions and limits on the grounds of public or private interest that together govern the right of access to documents held by the European Parliament, Council and Commission – as provided for in Article 255 of the EC Treaty – in a way that ensures the widest possible access to the documents;

(b) to establish rules ensuring the easiest possible exercise of this right; and

(c) to promote good administrative practice on access to documents.

Article 2
Application, timing, and action to implement the Regulation

1 This Regulation is binding in its entirety and applies directly in all Member States from 3 December 2001. It comes into force on the third day after its publication in the Official Journal.

2 The institutions must adapt their rules of procedure to this Regulation. The adaptations must take effect from 3 December 2001.

3 Within six months of this Regulation coming into force, the Commission must examine the conformity with this Regulation of:

(a) Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 on the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community(3), to ensure the preservation and archiving of documents to the fullest extent possible; and

(b) existing rules on access to documents.

Article 3
Definitions

In this Regulation:

(a) document means any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within an institution’s sphere of responsibility;

(b) institutions means the European Parliament, Council and Commission;

(c) Official Journal (OJ) means the Official Journal of the European Communities;

(d) sensitive documents means documents that –

(i) originate from the institutions or the agencies established by them, from Member States, third countries or International Organisations;

(ii) are classified as ‘Trés secret/Top secret’, ‘Secret’ or ‘Confidentiel’ in accordance with the rules of the institution concerned; and

(iii) protect essential interests of the European Union or of one or more of its Member States in the areas covered by Article 5(1)(a), notably public security, defence and military matters;

(e) third party means any natural or legal person, or any entity outside the institution concerned, including the Member States, other Community or non-Community institutions and bodies, and third countries.

Article 4
Who has the right of access, and to what documents

1 Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.

2 Subject to the same principles, conditions and limits, the institutions may grant access to documents to any

(1) OJ C 177 E, 27.6.2000, p. 70.
natural or legal person not residing or not having its registered office in a Member State.

3 This Regulation applies to all documents held by an institution, namely documents drawn up or received by it and in its possession, in all areas of activity of the European Union.

4 If there is a right of access to a document under this Regulation, the document must be made accessible following a written application or directly in electronic form or through a register. In particular, a document drawn up or received during a legislative procedure must be made directly accessible in accordance with Article 13.

5 Sensitive documents are subject to special treatment in accordance with Article 10.

6 This Regulation does not prejudice the rights of public access to documents held by the institutions which might follow from instruments of international law or acts of the institutions implementing them.

**Article 5**

**Exceptions to the right of access**

1 An institution must refuse access to a document if disclosure would undermine the protection of:

(a) the public interest as regards public security; defence and military matters; international relations; and the financial, monetary or economic policy of the Community or a Member State;

(b) the privacy and integrity of the individual, in particular in accordance with Community legislation on the protection of personal data.

2 Unless there is an overriding public interest in disclosure, an institution must refuse access to a document:

(a) if its disclosure would undermine the protection of –

(i) commercial interests of a natural or legal person, including intellectual property;

(ii) court proceedings and legal advice;

(iii) the purpose of inspections, investigations and audits; or

(b) that the institution has drawn up for internal use or received on a matter which has not yet been decided, if disclosure would seriously undermine its decision-making process; or

(c) that contains opinions for the institution’s internal use as part of its deliberations and preliminary consultations, even after the decision has been taken, if disclosure would seriously undermine its decision-making process.

3 As regards third-party documents an institution must consult the third party with a view to assessing whether an exception in paragraph 1 or 2(a) applies, unless it is clear that the document must or must not be disclosed.

4 A Member State may request an institution not to disclose a document originating from that Member State without its prior agreement.

5 If exceptions apply only to parts of the requested document, the rest must be disclosed.

6 The exceptions stated in paragraphs 1 and 2 apply only for the period during which protection is justified by the content of the document. The exceptions may apply for a maximum period of 30 years, or longer if necessary in the case of sensitive documents and those covered by the exceptions on privacy or commercial interests in paragraphs 1 and 2.

**Article 6**

**Documents held by the Member States**

When a Member State holds a document originating from an institution and receives a request for its disclosure, then unless it is clear that the document must or must not be disclosed, the Member State must:

(a) refer the request to the institution; or

(b) consult the institution in order to respond in a way that is in accordance with the stated purpose of this Regulation in Article 1.

**Article 7**

**Applications for access to documents**

1 Applications for access to a document must be:

(a) in writing, including electronic form;

(b) in any of the EU’s official languages as stated in Article 314 of the EC Treaty; and

(c) precise enough to enable the institution to identify the document.

2 Reasons for an application need not be stated.

3 If an application is not precise enough, the institution must ask the applicant to clarify it and help him or her to do so; for example, by providing information on how to use the public registers of documents.
4 If an application relates to an unusually long document or a large number of documents, the institution may seek a fair solution by informal discussion with the applicant.

5 The institutions must provide help and information to citizens on how and where they can apply for access to documents.

Article 8

Processing of initial applications for access

1 An institution must promptly register an application for access to a document and must send the applicant an acknowledgement. Within 15 working days after registering the application, the institution must:

(a) grant access to the document requested and provide access in accordance with Article 11 within that period; or

(b) in a written reply, totally or partly refuse (stating why) and inform the applicant of his or her right to make a follow-up application in accordance with paragraph 4.

2 In exceptional cases, for example if an application relates to an unusually long document or to a large number of documents, the institution may extend the time-limit stated in paragraph 1 by 15 working days, but must notify the applicant in advance and give detailed reasons.

3 If the institution does not reply within the prescribed time-limit, the applicant is entitled to make a follow-up application.

4 Within 15 working days of receiving a total or partial refusal from an institution, the applicant may make a follow-up application asking the institution to reconsider.

Article 9

Processing of follow-up applications for access

1 An institution must promptly register a follow-up application. Within 15 working days from doing so, the institution must:

(a) grant access to the document requested and provide access in accordance with Article 11 within that period; or

(b) in a written reply, totally or partly refuse access (stating why) and inform the applicant of the remedies open to him or her, namely –

(i) to take court proceedings against the institution under the conditions in Article 230 of the EC Treaty; and/or

(ii) to make a complaint to the Ombudsman under the conditions in Article 195 of the EC Treaty.

2 In exceptional cases, for example if an application relates to an unusually long document or to a large number of documents, the institution may extend the time-limit stated in paragraph 1 by 15 working days, but must notify the applicant in advance and give detailed reasons.

3 The institution’s failure to reply within the prescribed time-limit amounts to a negative reply. This entitles the applicant to take court proceedings against the institution or make a complaint to the Ombudsman (or both), under the relevant provisions of the EC Treaty shown in paragraph 1(b).

Article 10

Treatment of sensitive documents

1 Applications for access to sensitive documents under the procedures in Articles 8 and 9 must be handled only by people who have a right to read sensitive documents. Subject to the provisions on registers of documents in Article 12(2), these people must also assess what references to sensitive documents can be made in the public register.

2 Only with the originator’s consent may sensitive documents be recorded in the register or disclosed.

3 An institution that refuses access to a sensitive document must give its reasons in a way that does not harm the interests protected in Article 5.

4 Member States must take appropriate measures to ensure that when handling applications for access to sensitive documents they keep to the principles in this Article and Article 5.

5 Each institution’s rules on sensitive documents must be made public.

6 The Commission and the Council must inform the European Parliament regarding sensitive documents in accordance with arrangements agreed between the institutions.

Article 11

Access following a successful application

1 After an institution has replied positively to an application, it must allow the applicant to consult the documents on the spot or send him or her a copy, including,
where available, an electronic copy, according to the applicant's preference. The cost of producing and sending copies of 20 or more A4 pages may be charged to the applicant, but the charge may not exceed the real cost of producing and sending the copies. Consultation on the spot, copies of fewer than 20 A4 pages and direct access in electronic form or through the register must be free of charge.

2 If a requested document has already been disclosed by an institution and is easily accessible to the applicant, the institution may fulfil its obligations by informing him or her how to obtain the document.

3 Documents will be supplied in an existing language and format (including electronically or in an alternative format such as Braille, large print or tape) with full regard to the applicant's preference.

**Article 12**

**Registers of documents**

1 To make citizens' rights under this Regulation effective, each institution must provide public access to a register of documents by 3 June 2002. Access to the register should be provided in electronic form. References to documents must be recorded in the register without delay and in a way that does not undermine protection of the interests in Article 5.

2 For each document the register must contain:

(a) a reference number (including, where applicable, the interinstitutional reference);

(b) the subject matter or a short description of the contents (or both); and

(c) the date it was received or drawn up and recorded in the register.

**Article 13**

**Direct access in electronic form or through a register**

1 As far as possible and in accordance with its rules, an institution must make documents directly accessible to the public in electronic form or through a register.

2 In particular, subject to Articles 5 and 10, institutions should provide direct access to legislative documents – namely those drawn up or received during procedures for the adoption of acts that are legally binding in or for the Member States.

3 Where possible, other documents, particularly those on the development of policy or strategy, should be made directly accessible.

4 If the register does not give direct access, it must as far as possible state where the document is.

**Publication of documents in the Official Journal**

1 In addition to the acts referred to in Article 254(1) and (2) of the EC Treaty and the first paragraph of Article 163 of the Euratom Treaty, the following documents must, subject to Articles 5 and 10 of this Regulation, be published in the Official Journal:

(a) Commission proposals;

(b) common positions adopted by the Council in accordance with the procedures referred to in Articles 251 and 252 of the EC Treaty and the reasons underlying those common positions, as well as the European Parliament’s positions on these procedures;

(c) framework decisions and decisions referred to in Article 34(2) of the EU Treaty;

(d) conventions established by the Council in accordance with Article 34(2) of the EU Treaty;

(e) conventions signed between Member States on the basis of Article 293 of the EC Treaty;

(f) international agreements concluded by the Community or in accordance with Article 24 of the EU Treaty.

2 As far as possible, the following documents must be published in the Official Journal:

(a) initiatives presented to the Council by a Member State under Article 67(1) of the EC Treaty or Article 34(2) of the EU Treaty;

(b) common positions referred to in Article 34(2) of the EU Treaty;

(c) directives except those referred to in Article 254(1) and (2) of the EC Treaty, decisions except those referred to in Article 254(1) of the EC Treaty, and recommendations and opinions.

3 An institution’s rules of procedure may establish which further documents it must publish in the Official Journal.
Article 15

Information to citizens

1 Each institution must take the necessary measures to inform citizens of their rights under this Regulation.

2 The Member States must cooperate with the institutions in providing information to citizens.

Article 16

Development of good administrative practices in the institutions

1 The institutions must develop good administrative practices to help people exercise the right of access guaranteed by this Regulation.

2 The institutions must establish an interinstitutional committee to examine best practice, address possible conflicts and discuss developments on access to documents.

Article 17

Reproduction of documents

This Regulation does not prejudice any existing rules on copyright that may limit a third party’s right to reproduce or exploit disclosed documents.

Article 18

Reports to be provided by the institutions

1 Annually, each institution must publish a report on the previous year including:

(a) the number of cases in which the institution refused to grant access to documents;
(b) the reasons for these refusals; and
(c) the number of sensitive documents not recorded in the register.

2 By 31 January 2004, the Commission must:

(a) publish a report on the implementation of the principles of this Regulation;
(b) make recommendations including, if appropriate, proposals for revising this Regulation and an action plan of measures to be taken by the institutions.

Not done at Brussels, 30 April 2002.

Not for the European Parliament – President: N. FONTAINE
Not for the Council – President: B. LEJON
Relevance of this Regulation to documents concerning common foreign and security policy, police matters etc

7 In accordance with Articles 28(1) and 41(1) of the EU Treaty the right of access also applies to documents relating to the common foreign and security policy, and to police and judicial cooperation in criminal matters. Each institution should respect its security rules.

Relevance of this Regulation to all agencies established by the institutions

8 To ensure the full application of this Regulation to all EU activities, all agencies established by the institutions should apply the principles of this Regulation.

Special treatment for sensitive documents

9 Certain documents should be given special treatment because they are highly sensitive. Arrangements for informing the European Parliament of the content of such documents should be made through interinstitutional agreement.

Access to documents held by the institutions, but originating elsewhere

10 The institutions should grant access not only to documents they have drawn up, but also to documents they have received. In this context, however, Declaration No 35 attached to the Final Act of the Treaty of Amsterdam says that a Member State may request the Commission or the Council not to communicate to third parties a document originating from that State without its prior agreement.

Exceptions to access when documents are for the institutions’ internal purposes

11 In principle, all documents of the institutions should be accessible to the public. However, certain public and private interests should be protected by exceptions. The institutions should be entitled to protect their internal consultations and deliberations where necessary to safeguard their ability to do their work. In assessing the exceptions, the institutions should take account of the principles in Community legislation concerning the protection of personal data in all areas of EU activities.

Rules on access to conform to the Regulation

12 All rules concerning access to documents of the institutions should conform to this Regulation.

Two-stage application procedure

13 To ensure that the right of access is fully respected, a two-stage application procedure should exist. If the institution refuses access at the second stage, the applicant should then be able to take court proceedings or complain to the Ombudsman.

Informing the public

14 Institutions should take the necessary measures to inform the public about the new Regulation and to train their staff to help citizens exercise their rights under it. In particular, institutions should provide access to a register of documents.

Cooperation between Member States

15 This Regulation does not amend or seek to amend national legislation on access to documents, but the principle of loyal cooperation that governs relations between the institutions and the Member States means that Member States should:

(a) take care not to hamper the proper application of this Regulation; and

(b) respect the security rules of the institutions.

Existing rights of access to be unaffected

16 This Regulation does not prejudice existing rights of access to documents for Member States, judicial authorities or investigative bodies.

Modification or repeal of Decisions and rules

17 In accordance with Article 255(3) of the EC Treaty, each institution’s rules of procedure lay down specific provisions on access to its documents. Therefore, if necessary, the following should be modified or repealed: Council Decision 93/731/EC of 20 December 1993 on public access to Council documents(4); Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents(5); European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents(6); and the rules on confidentiality of Schengen documents.

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Appendix

European Commission legal service's response to “Clarifying Eurolaw”

The European Commission's legal service has responded to Clarifying Eurolaw in the form of a Note of the committee on legislative technique (Brussels, 12.02.2002), reproduced in full below. It says that things have moved on since 1988 when the toys directive was first drawn up and that “many of the suggestions ... are already part of the institutions’ rules”. That point is debatable, but in fact the booklet gave a European Commission legal reviser a page to explain how the toys directive might be different were it drafted today – a fact not mentioned in the Note. The other arguments in the Note seem similarly unsupported and flimsy. In particular, the Note does not give any convincing evidence that Clarifying Eurolaw:

- “misrepresents the current position”;
- “change[s] the meaning of the original [directive] text”; or
- “is anti-lawyer”.

The Note repeatedly complains that the rewritten directive does not conform to the agreed structure and style for EC legislation – but since the booklet’s main thrust was that these were the very things in need of reform, this is hardly surprising.

NOTE OF THE COMMITTEE ON LEGISLATIVE TECHNIQUE

The Legal Service has studied the suggestions of the Plain Language Commission carefully. Its staff have attended presentations given by Martin Cutts [before the booklet was published – authors’ note]. Some have responded to requests made by him for assistance. Copies of his brochure Clarifying Eurolaw have been distributed in particular to all the members of the Committee on Legislative Technique and to all the legal revisers.

There are five general criticisms of the brochure, and a number of specific points.

General criticisms

(1) The brochure suggests the incorporation in Community acts of a “citizens’ summary” which is unnecessary and might be a source of uncertainty.

All Community regulations, directives and decisions must include a statement of the reasons on which they are based (Article 253 of the EC Treaty). The purpose of the statement of reasons is to set out concise reasons for the chief provisions of the enacting terms without reproducing or paraphrasing them (Interinstitutional Guideline 10). The Court of Justice has stated in a recent case: “according to settled case-law, the statement of reasons required by Article 190 of the Treaty must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review” (judgment of 25 October 2001 in Case C-120/99 Italy v Council, paragraph 28). Accordingly there is already in those acts material which to a large extent meets the concerns expressed in the brochure.

Moreover, when the Commission makes a proposal for an act to be adopted by the European Parliament and the Council or by the Council alone, it publishes with its proposal (in CELEX) an explanatory memorandum explaining briefly the content of the proposed measure.

Finally, when new legislation is adopted, the competent department of the Commission will, where appropriate, issue press releases and other material to accompany the legislation. Accordingly there is already enough explanatory material available regarding the content of Community acts.

Publication of a summary could also lead to a risk of uncertainty. Legislative provisions have to be precise. Because they are prospective and have to allow for all possible eventualities, they are often qualified by conditions and exceptions. For that reason, they are sometimes formulated in a way that may appear hard to understand. A summary of those provisions written in easily understandable terms could not exactly match the precision of the original, with all the qualifications. The resulting discrepancies would be a source of confusion which might ultimately have to be resolved by the courts. Citizens would be misled rather than helped.

(2) Many of the suggestions made in the brochure are in fact already prescribed by the institutions’ rules on drafting.

Examples are:

- clear, simple and precise drafting – Guideline 1 in the Interinstitutional Agreement;
- taking account of the persons addressed – Guideline 3;  
- short sentences – Guideline 4;
- titles – Guideline 8;  
- a provision setting out the subject matter and scope – Guideline 13;  
- use of definitions – Guideline 14; and  
- adherence to a standard structure to help users navigate the text – Guideline 15.

Other suggestions have long been part of the institutions’ practice in appropriate cases. Examples are the insertion of a table of contents and the use of headings to articles.

(3) The brochure as a whole is based on a false premiss, which is set out as follows on page 3:

“legislators should regard the primary audience of every directive as interested private citizens, not lawyers”.

Directives are addressed to the Member States. Their purpose is to define legal obligations. For the sake of legal certainty, they must be precise, while allowing for all future eventualities. Where necessary, those requirements must outweigh the concern to make them easy for the man in the street to understand.

(4) The problem focused on by the Plain Language Commission of use of archaic language and legalese is not a serious problem in Community legislation. More serious prob-
The whole tone of the brochure is anti-lawyer (see for example the extracts from the brochure in the Annex to this note, in particular points 3 and 4).

The suggestions it makes are often based on individual preferences, unlike the institutions' own rules which are the result of broad consultation (see for example the extracts in the Annex, in particular points 10, 12 and 13).

The brochure takes as its target a Directive drawn up in 1988, before the processes set in motion by the Edinburgh Council in 1992 and Declaration 39 adopted by the Amsterdam Intergovernmental Conference in 1997. Many of the suggestions made in the brochure are already part of the institutions' rules (see for example the extracts in the Annex, in particular the list in point 6 and point 16).

At times it misrepresents the current position (see for example the extracts in the Annex, in particular points 2, 6, 8 and 9).

Some of the suggestions for redrafting the Directive made in the brochure change the meaning of the original text (see for example the extracts in the Annex, in particular points 7 and 15).

Annex: List of points in the brochure Clarifying Eurolaw which are problematical

1. Page 3: "I believe ... that legislators should regard the primary audience of every directive as interested private citizens, not lawyers."

2. Page 5: "The guide will be out soon."

3. Page 5: "No politician or lawyer openly advocates proximity and fog. Yet proximity and fog is often what arises. With some justice, this is blamed on the complexity of the topics being tackled. Yet when directives are closely examined, their complexity seems to arise far less from mysterious topics than from unusual language, tortuous sentence construction, and disorder in the arrangement of information. In other words, the complexity is largely linguistic and structural smoke created by poor drafting practices."

4. Page 6: "Lawyers need to be convinced that any fool can make a complex topic sound complex, but that it takes real skill to clarify."

5. Page 6: "Directives have few features that welcome ordinary citizens, who may suddenly find themselves on unfamiliar ground. A way of resolving this is to start all directives with a brief summary of the key points – a citizen's summary. This would yield three advantages:
   • it would give readers a quick overview of the main news;
   • it would remind lawmakers of their ultimate audience and paymasters;
   • it would help journalists understand and convey the issues ... ."

6. Page 7: "Directives often break well-accepted and commonsense drafting principles that are supported by research into readers' preferences. I therefore offer these six principles as a gentle reminder to future legislators. Directives should be:
   1 named, not just numbered – they should have a clear, short title;
   2 purposeful – readers should know from the first few words what each directive will achieve;
   3 easy to navigate – material should be arranged so that people can easily find the part they want and see how it fits into the whole story;
   4 written in modern, straightforward words and constructions...; [...]"

7. Page 7: "The rewrite is not exactly equivalent to the original."

8. Page 9, point 1: "The directive lacks an obvious title; nor does it have a contents list or clearly stated purpose."

9. Page 9, point 3: "Despite the agreement's clear recommendation, the recitals in recent directives are sometimes left unnumbered, as they are here."

10. Page 13: "When imposing an obligation, must is now preferable [to shall]."

11. Page 15, point 24: "Article 8(3) begins with In the event of non-observance of the obligations ... . This is unusual style in written English and rare in spoken English except in highly formal settings. It merely means, 'If x does not observe y'."

12. Page 19: "The main ideas behind the rewrite ... are to:
   • give the directive a short and memorable title; ...
   • provide a citizen's summary ... ;
   • state early in the directive what it is about and what it does;
   • state early in the directive when it must be transposed into national law instead of stating this at the end, as in the original [...]"

13. Page 19: "The reasons appear at the end not because they are unimportant, but because they are less important to most readers than the summary and the Articles. ... ."

14. Page 19: "Citizen's summary... ."

15. Page 20: "The revision is the most accurate I could achieve; but, as stated earlier, it is rarely possible to get exact equivalence in a rewrite exercise."

16. Page 20: "In the new Article 2, ... : careful use of definitions has enabled the main text to be 'unpacked'... ."