

# ***COUNCIL GUIDE***

*Internal document*

## *II. Comments on the Council's*

### *Rules of Procedure*

*– September 1996 –*

General Secretariat

DG F – Information policy

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Luxembourg: Office for Official Publications of the European Communities, 1997

ISBN 92-824-1298-9

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*Printed in Belgium*

## FOREWORD

The complexity of the tasks facing the Council means that Council working methods need to be redefined regularly. In order to facilitate the work of the Presidency and of the delegations, the Council introduced systematic planning of meetings from the end of 1988 and initiated publication by the General Secretariat of a *Presidency Vade-mecum*. The entry into force of the Treaty on European Union made the organization of proceedings even more complex: consequently, the Council instructed the Secretary-General to draw up a genuine handbook covering all Council activities.



This first edition of the new *Council Guide* presented by the General Secretariat was compiled under its sole responsibility; it has no legal force and is an internal document intended solely as an aid for the Presidency and Member State delegations.

The *Guide* covers the whole range of Council activities. It consists of three sections, each published separately. The first section – the Presidency Handbook – continues the operation begun with *the Presidency Vade-mecum* and sets out in a practical context the arrangements concerning the preparation and running of a Presidency. The second section consists of Comments on the Council's Rules of Procedure, reflecting the current interpretation of that text in practice. The third section – the Delegates' Handbook – contains practical information on the planning and running of meetings, the internal organization of the General Secretariat and the services provided for delegates.

My wish, in making this first version of *the Council Guide* available to those involved in the work of our Institution, has been to satisfy the request voiced by the Council and to contribute towards efforts to ensure information and transparency. Any suggestions concerning the content of this Guide will be welcome.

The Secretary-General

A handwritten signature in dark ink, which reads "Jürgen Trumpf". The signature is written in a cursive, slightly slanted style.

Jürgen TRUMPF

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## INTRODUCTION

The Council's Rules of Procedure are an essential instrument in the operation of the institution. Within the framework established by the Treaty on European Union and the Treaty establishing the European Communities, the Rules of Procedure lay down a series of provisions governing the Council's proceedings. These comments on the Rules of Procedure (which are not intended to be exhaustive or to state the legal position but rather to reflect the current interpretation of the text in practice) have been divided into five major chapters:

1. The Council's proceedings
2. Council decision-making
3. Council acts and their form
4. Structure of the Council
5. Other provisions.

The twenty-six Articles of the Rules of Procedure have been grouped together by subject under these five major chapters. The Council's Rules of Procedure and other reference texts are annexed.

## Chapter I – The Council’s proceedings

### 1. Convening and places of work (Article 1 CRP)

As in Article 147 TEC, Article 1(1) CRP provides that the Council meets when convened by its President on his own initiative or at the request of one of its members or of the Commission. If a delegation or the Commission requests that the Council be convened, the President is obliged to do so. The President may, however, exercise some discretion in selecting the date; in making this choice, he must take account in particular, in addition to his colleagues’ opinions, of:

- the deadlines imposed by the Rules of Procedure (Article 2(1) CRP);
- the fact that the Council may be legally obliged to meet or to act before a set date (e.g. in the case provided for in Article J.8(4) TEU or where the Council is obliged to state a position on a Commission proposal in the context of committee procedure);
- rules governing the quorum (Article 7(4) CRP) so that the Council can take a vote.

Without prejudice to the first paragraph of Article 146 TEC and the rules governing the quorum, each Council member is entitled to decide on the composition of his/her delegation. <sup>(1)</sup>

The future Presidency makes known the proposed dates for the Council meetings at least seven months before the start of its Presidency. Naturally, this programming is flexible and the scheduled dates may be changed during the Presidency.

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<sup>(1)</sup> It should be noted that the Council has not yet made use of the possibility given to it by Article 4(3) CRP to set a legal limit on the number of officials accompanying members of the Council. On 10 December 1988, however, the Council adopted conclusions concerning working methods in which a ceiling of six members per delegation is set (see point 2(b) of the conclusions). The number of such officials to whom travel expenses are reimbursed by the Council General Secretariat was limited by the Secretary-General’s Decision of 12 June 1996, taken on the basis of Article 21(4) CRP, which has been in force since 1 July 1996 (Article 6):

- Council meetings: six persons per delegation, plus head of delegation;
- working parties and committees: two persons (EC and CFSP), three persons (JHA Working Parties) and four for the K.4 Committee and Steering Groups I to III (JHA).

For the CFSP, Article J.8(4) TEU provides that in cases requiring a rapid decision, the Presidency, of its own motion, or at the request of the Commission or a Member State, may convene an extraordinary Council meeting within 48 hours or, in an emergency, within a shorter period.

The Decision of the Representatives of the Governments of the Member States of 12 December 1992, taken pursuant to Article 216 TEC, confirmed that the **seat of the Council** was in Brussels and that Council meetings are held in Luxembourg in April, June and October. <sup>(1)</sup> It may exceptionally be necessary to hold Council meetings elsewhere, in particular in the case of international negotiations in which the Community participates. In that case, the decision must be taken unanimously.

In accordance with well-established practice, each Council Presidency organizes **informal ministerial meetings**. The conclusions approved by the Council on 10 December 1988, which remain valid, provide for a limited number of such meetings (seven, in addition to the meetings of the Ministers for Home Affairs and Justice, as agreed in the Council conclusions of 29 May 1995). The aim of the informal meetings is to consider jointly and exchange ideas on topics of a general scope. They are not Council meetings and cannot replace the Council's activities. In order to preserve their informal character, there is no agenda and the discussions cannot give rise to the drawing-up of documents prior to or after the meeting. Informal meetings obviously cannot adopt decisions in spheres falling within the field of competence of the institutions, under the Treaties.

## **2. Agenda (Article 2 CRP)**

The provisional agenda for each Council meeting is drawn up by the President and sent to the other members of the Council and to the Commission at least **fourteen days** before the beginning of the meeting. Convening a meeting at shorter notice therefore seems pointless unless all the members of the Council agree to include at least one substantive item on the agenda.

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<sup>(1)</sup> Published in OJ No C 341, 23.12.1992, p. 1.

The provisional agenda contains items in respect of which a request for inclusion, together with any relevant documents, has been received by the General Secretariat at least **sixteen days** before the beginning of the meeting.

A specific arrangement exists for proceedings under Title VI TEU. A statement for the Council minutes which was published as an Annex to the CRP states that, in this field, the President will endeavour to ensure that, in principle, the provisional agenda and relevant documentation are received by the members of the Council at least **twenty-one days** before the beginning of the Council meeting.

The list of items on the provisional agenda is first drawn up by the Presidency. It is sent to the members of the Council by telex or fax (complying with the 14-day deadline), then submitted to Coreper and, normally, the agreement reached by Coreper is confirmed by the Council. The provisional agenda is submitted to the Council, which adopts it by a simple majority. Any addition to the agenda must be approved unanimously if it was not submitted at least fourteen days in advance, including the "A" items. This is not the case with regard to "Other business" items, whose addition to the Council agenda is usually requested by members of the Council or the Commission at the beginning of the meeting, as "Other business" items cannot give rise to any decision or even, in principle, any discussion.

The provisional agenda also indicates items on which the Presidency, a member of the Council or the Commission may request that a vote be taken <sup>(1)</sup>. The indication takes the form of an asterisk following the mention of the item on the agenda. It is intended to enable Member States to complete all the internal procedures they consider necessary or desirable and to ensure that the vote does not take them by surprise. This means that unless the Council unanimously decides otherwise, a vote must be scheduled at least fourteen days before the Council meeting. The asterisk indicates the possibility of a vote, without creating an obligation in this respect.

The provisional agenda is divided into Part A and Part B.

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(1) Revoting, see Chapter II below: "Council decision-making".

"A" items on the agenda are items for which, given their state of preparation by Coreper, approval by the Council seems possible without discussion, which does not exclude the possibility of any member of the Council or of the Commission expressing an opinion at the time of the approval of those items and having statements included in the minutes. The practice of "A" items prevents Council meetings from being cluttered up with a large number of items on which agreement has already been reached and which would have to be examined individually.

"A" items are included on a list which is approved as a whole by the Council, normally at the beginning of the meeting. It should not, however, be concluded that no vote is taken on each item as any item included on the list of "A" items is the subject of a note forecasting the outcome of the vote and indicating the existence of the majority required, as foreseen during Coreper's proceedings. By adopting the list of "A" items, each item is formally adopted, confirming the forecasts of votes mentioned in the note. Those votes may of course be altered by the members of the Council as they see fit.

It must, however, be pointed out that an "A" item is withdrawn from the agenda, unless the Council decides otherwise, if a position on an "A" item might lead to its further discussion or if a member of the Council or of the Commission so requests.

It is then included in Part "B" of the same meeting by a decision taken by a majority of the members of the Council, if it was included on the provisional agenda at least fourteen days before the meeting. Otherwise, the Council must decide unanimously to include it in Part "B" of the same meeting, failing which it will be included on the agenda for a forthcoming meeting.

Matters which must be discussed and on which a vote may be taken are included under **Part B**.

### **3. Public access and transparency (Articles 4 to 6, Article 7(5) and Article 22 CRP)**

Article 5(1) CRP which provides that Council meetings are not public, also applies to preparations for Council meetings, i.e. all the Council's subordinate bodies: Coreper, Committees (Article 113, Political, K.4, Monetary, etc.) and working parties.

Public retransmission by audiovisual means referred to in Article 6 CRP applies only to the Council itself.

In practice, there are other meetings connected with Council activities which are not public either, such as the coordinating meetings of members of the Council to coordinate their positions on the spot in an international context.

In practice, **the Commission** is practically always present at Council meetings and at meetings of Council preparatory bodies at all levels and in all the fields of action provided for by the TEU, even if the act adopted by the Council does not require a Commission proposal. The Council rarely decides to deliberate in the Commission's absence, but this occurs when the Council considers internal affairs (appointment of officials, cases before the Court of Justice, etc.). Commission participation in the Council's proceedings is facilitated by the fact that it receives documentation issued by the Council General Secretariat, on an equal footing with the Permanent Representations.

**Other Community institutions or bodies** participate occasionally in the Council's proceedings. Within the framework of the budgetary procedure, representatives of the European Parliament are sometimes invited to put their institution's viewpoint to the Council. Similarly, representatives of the Court of Justice or the Court of Auditors are normally invited to attend Council meetings dealing with matters connected with those institutions. The same applies to the European Monetary Institute or the EIB. Representatives of the Economic and Social Committee or the Committee of the Regions may also be invited to submit their budgetary requests to the Council.

The presence of representatives from other Community institutions or bodies depends to a large extent on the subject discussed and the desirability or otherwise in each specific case of inviting representatives to attend part of the Council's discussions. A decision must be taken by the Council concerning any invitation.

Article 5(1) CRP provides that the deliberations of the Council are covered by the obligation of professional secrecy, unless the Council decides otherwise. This provision should be seen in relation to other provisions governing transparency of the Council's proceedings. Among those provisions, those governing the following spheres should be mentioned:

- the holding of public debates by the Council;
- disclosure of votes;
- public access to documents;
- disclosure of statements for the Council minutes and the minutes themselves.

Article 6 CRP provides for the **holding of public debates** by the Council. Policy debates held by the Council <sup>(1)</sup> on the six-monthly work programme submitted by the Presidency and, if appropriate, on the Commission's annual work programme must therefore be the subject of public retransmission by audiovisual means.

Other debates may be the subject of public retransmission, in particular where they concern an important issue affecting the interests of the Union or an important legislative proposal. In that case, the decision is taken unanimously following a proposal by the Presidency, a member of the Council or the Commission.

In its conclusions on transparency of 29 May 1995, the Council decided to hold such debates more frequently. Each Presidency therefore usually tables a list of suggestions for televised debates and that list, adapted where appropriate following the comments made by delegations or the Commission, is adopted by the Council.

With regard to **disclosure of votes**, the record of voting is made public in accordance with Article 7(5) CRP, namely:

- when the Council is acting as legislator within the meaning of the term in the Annex to the CRP <sup>(2)</sup> unless the Council decides otherwise. This rule applies when the Council adopts a

(1) In the General Affairs Council and the Economic and Financial Affairs Council (see statement re Article 6(1) CRP in the Council minutes, published in the OJ of the European Communities No L 304, 10.12.1993, p. 1).

(2) That Annex provides that: "*The Council acts as legislator within the meaning of the first indent of Article 7(5) when it adopts rules which are legally binding in or for the Member States whether by means of regulations, directives or decisions, on the basis of the relevant provisions of the Treaties, in particular on the basis of Article 43 of the Treaty establishing the European Community or in the framework of the procedures in Article 189b and Article 189c of that Treaty, with the exception of discussions leading to the adoption of internal measures, administrative or budgetary acts, acts concerning interinstitutional or international relations or non-binding acts such as conclusions, recommendations or resolutions. Votes shall not be made public in the case of discussions leading to indicative votes or the adoption or preparatory acts.*"

common position pursuant to Article 189b or 189c TEC;

- when votes are cast by the members of the Council or their representative on the Conciliation Committee set up by Article 189b TEC;
- when the Council acts pursuant to Titles V and VI TEU by a unanimous Council decision taken at the request of one of its members;
- in other cases, by Council decision taken by a simple majority at the request of one of its members.

It should be pointed out that the record of the votes on legislative acts is now made public systematically. The Council has never had recourse to the exemption provided for in the CRP and it stated at its meeting on 29 May 1995 that it did not intend to have recourse to it in future.

Further, on 6 December 1993 the Council adopted a code of conduct for the implementation of Articles 5(1), second subparagraph, and Article 7(5) of the CRP (see Annex II).

With regard to **public access to Council documents**, Council Decision 93/731/EC of 20 December 1993 <sup>(1)</sup> on public access to Council documents is a legal instrument for implementing the code of conduct approved by the Council and the Commission concerning public access to Council and Commission documents <sup>(2)</sup>. That Decision was based on Article 151(3) TEC and Article 22 CRP <sup>(3)</sup>.

The procedure laid down in Decision 93/731/EC guarantees the applicant for access to a Council document a deadline for the Council's reply, a detailed examination of his/her request and the right of appeal to the Council if the first reply – drawn up by the Council General Secretariat – is negative. Finally, if a confirmatory application is rejected, the applicant is informed of the content

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<sup>(1)</sup> OJ No L 340, 31.12.1993, p. 43 (Annex III).

<sup>(2)</sup> OJ No L 340, 31.12.1993, p. 41 (Annex IV).

<sup>(3)</sup> The judgment of the Court of Justice of 30 April 1996 in Case C-58/94 (not yet published) confirmed the legality of this legal basis. For classification of Council documents, see Chapter IV.2 below.



of Article 138e and 173 TEC concerning respectively the conditions governing referral to the Ombudsman and review by the Court of Justice of the legality of Council acts.

A report on implementation of that Decision in 1994 and 1995 was submitted by the Secretary-General of the Council on 3 July 1996 pursuant to Article 9 of that Decision. (1)

With regard to the **disclosure of statements in the Council minutes and minutes**, on 2 October 1995 the Council adopted a code of conduct (see Annex V) on public access to the minutes and statements in the minutes of the Council acting as legislator which considerably modifies Council practice in this sector. Since adoption of the code, statements in the Council minutes concerning the final adoption of legislative acts within the meaning of the Annex to the CRP have been released to the public. They are available to the public on request from the Council General Secretariat, either from the Information Policy, Transparency and Public Relations Division of Directorate-General F or from the Press Office. Examination of statements is facilitated by the fact that the Council General Secretariat draws up a monthly list of legislative acts adopted by the Council, accompanied by statements in the minutes which have been released to the public. Those monthly lists are also available on request and forwarded systematically to the European Parliament.

Where the code of conduct applies, it is the responsibility of the Antici Group, the Mertens Group or the SCA to examine the statements prior to the final adoption of the act. The lists of "A" items submitted to the Council since the adoption of the code of conduct now contain the indication "LA" and where appropriate "S" to indicate respectively that it is a legislative act, accompanied if appropriate by one or more statements in the Council minutes. Adoption of an "A" item containing those two indications therefore also covers the Council decision to release to the public the statements concerned.

Finally, Article 5(2) CRP provides that the Council may authorize **the production of a copy or an extract from its minutes for use in legal proceedings**. Prior authorization by the Council must therefore be requested before a Council document can be produced for use in legal proceedings.

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(1) 8330/96 INF 60 API 58 JUR 193.

Use of that provision is frequently made when Member States or other institutions want to produce a Council document in a case before the Court of Justice or the Court of First Instance. In such a case, the Council Legal Service examines the content of the document to assess whether it contains confidential information, disclosure of which before the Court of Justice or the Court of First Instance could be harmful to the Council's interests. After that assessment, the Legal Service suggests to Coreper the action that should be taken on the request. Similarly, in cases in which the Council is involved, the Legal Service's agents appointed to represent the Council ask the latter for authorization to produce documents which they consider it useful to make known to the Court of Justice or the Court of First Instance. The Council's decision on the application of this Article is taken by a simple majority.

#### **4. Minutes (Article 9 CRP)**

Article 9 CRP provides that the minutes of each Council meeting shall be drawn up. The minutes are a document which summarizes the decisions taken and occasionally the content of the discussions held during that Council meeting (<sup>1</sup>).

The draft minutes are in principle drawn up by the General Secretariat within a short period – fifteen days – and submitted to the Council for approval.

Before the minutes are approved, any member of the Council, or the Commission, may request that more details be inserted in the minutes regarding any item on the agenda. When approved, the minutes are signed by the President-in-Office at the time of approval and by the Secretary-General of the Council.

According to the CRP, the minutes generally contain three points concerning each item on the agenda:

- indication of the documents submitted to the Council;
- decisions taken or conclusions reached by the Council;
- statements made by the Council and those whose entry has been requested by a member of the Council or the Commission.

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(<sup>1</sup>) A summary record of Coreper's meetings is also produced by the General Secretariat.

With regard to the indication of documents, all documents submitted to the Council are numbered and bear a reference for their identification.

With regard to decisions taken or conclusions adopted, the practice of drawing up Council minutes tends towards a very brief description of the decision taken. The content of Council discussions is in fact reflected more fully in the press releases issued by the General Secretariat after each Council meeting than in the minutes of the meeting.

Any statements for the Council minutes are annexed to the minutes <sup>(1)</sup>.

Finally, the adoption of the code of conduct of 2 October 1995 (see Annex V) has meant that Council minutes or part of those minutes may be released to the public under the conditions laid down by the code.

## **5. Rules governing languages (Article 10 CRP)**

The rules governing languages which apply to the various basic treaties (European Communities and European Union), the treaties amending them and agreements between Member States must be distinguished from the rules applicable to the institutions of the European Union (acts of the institutions and working languages).

With regard to the **rules governing languages which apply to the constituent treaties and agreements between Member States**, apart from the ECSC Treaty which was drawn up in French, the only authentic text of which is in French (Article 100 of the ECSC Treaty), the authentic text of the EC, Euratom and EU Treaties is in twelve languages, namely: Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish. <sup>(2)</sup> In this context Irish is also an official language of the Community and the European Union.

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<sup>(1)</sup> See point 3 above for disclosure of statements in the Council minutes.

<sup>(2)</sup> See Article 248 of the EC Treaty, Article 225 of the Euratom Treaty and the Accession Treaties, most recently Article 176 of the Treaty concerning the accession of Austria, Finland and Sweden, and Article 5 TEU.

Similarly, the texts of agreements concluded between the Member States of the European Union (either within the framework of Article 220 of the EC Treaty or on the basis of Article K.3(2)(c) TEU) are authentic in the twelve languages concerned. <sup>(1)</sup>

With regard to the rules governing the languages of the institutions of the European Union (acts of the institutions and working languages), the rules applicable to the institutions are based on Article 217 of the EC Treaty (the wording of Article 190 of the Euratom Treaty is identical). Pursuant to Articles J.11 and K.8 TEU, Article 217 applies to Titles V and VI TEU.

Article 217 TEC instructs the Council to determine unanimously the rules governing the languages of the institutions of the Community "without prejudice to the provisions contained in the Rules of Procedure of the Court of Justice". It was therefore on that basis that on 15 April 1958 the Council adopted **Regulation No 1** determining the languages to be used by the European Economic Community, <sup>(2)</sup> as amended by the various Acts of Accession. That Regulation provides for **eleven official languages** (Ireland waived the right for Irish to become an official language of the institutions of the Community). <sup>(3)</sup> The main provisions of <sup>(1)</sup> that Regulation are as follows:

- *"The official languages and the working languages of the institutions of the Community shall be Spanish, Danish, German, Greek, English, French, Italian, Dutch, Portuguese, Swedish and Finnish."* (Article 1);
- documents which a Member State or a person subject to the jurisdiction of a Member State sends to the institutions may be in one of the official languages selected by the sender, the reply being drafted in the same language, whereas documents which an institution sends to a Member State or to a person subject to its jurisdiction are drafted in the language of that State (Articles 2 and 3). Only the text in the languages used in that correspondence is authentic;
- regulations and other documents of general application are drafted in the eleven official languages and the Official Journal is published in those languages (Articles 4 and 5), the texts in all the languages being authentic.

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<sup>(1)</sup> See for example Article 68 of the Brussels Convention concluded within the framework of Article 220 TEC and the final wording of agreements based on Article K.3 TEU.

<sup>(2)</sup> OJ No 17, 6.10.1958, p. 385.

<sup>(3)</sup> Statement made on 24 November 1971 during the accession negotiations.

Under Article 6 of Regulation No 1, the institutions may stipulate in their rules of procedure which of the languages are to be used in specific cases, which the Council did in Article 10 CRP. (1)

Pursuant to **paragraph 1** of Article 10 CRP, "*the Council shall deliberate and take decisions only on the basis of documents and drafts drawn up in the languages specified in the rules in force governing languages*" (i.e. the above Regulation No 1).

That provision enables a delegation to oppose discussion on an item if the relevant document is not available in the official language which it wants when the Council addresses that item. The term "draft" also refers to Commission proposals which must be submitted to the Council in the eleven official languages.

**Paragraph 2** of Article 10 therefore enables each member of the Council to specify an official language of the Council in which he requests that the text of any amendments tabled during the discussion be drawn up, with the additional possibility of opposing discussion if the text of the amendments is not drawn up in the language specified.

Article 10(1) CRP does not, however, enable a member of the Council to secure deletion from the agenda of an item included on the provisional agenda solely because the relevant documentation was not available in the language of his choice. Discussion of the item concerned may only be postponed.

In any case, a text may be approved in substance by the Council, even if the texts are not yet available in the eleven languages. However, subject to the possible derogations set out below, that text may in principle be **formally adopted** only if it is available in good and due form (finalized by the Legal/Linguistic Experts) in the eleven official languages.

Article 10(1) CRP in fact allows for the **possibility of waiving that rule**, provided that the Council both decides unanimously and that it is a matter of urgency. That waiver proves necessary

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(1) In accordance with Article 217 TEC, Article 7 of Regulation No 1 states that the languages to be used in the proceedings of the Court of Justice shall be laid down in its Rules of Procedure.

especially in the first few months following the accession of new Member States to the European Union because revised translations in their languages cannot be made available within the period laid down.

With regard to the **entry into force** of acts, the situation is different depending on whether it is an act of general scope, a binding act which is not of general scope or an act *sui generis* without legal effect vis-à-vis third parties:

- a regulation or a directive addressed to all Member States or a decision addressed to all Member States cannot enter into force (or consequently be published and/or the Member States notified of it) unless the text exists in the eleven official languages (Article 4 of Regulation No 1);
- the addressee(s) of a directive or an individual decision may be notified of it in the language(s) of the Member State concerned without waiting for the text to be available in the eleven official languages (Article 3 of Regulation No 1);
- a decision *sui generis* having no effect vis-à-vis third parties may enter into force without the text being available in the eleven official languages.

A common position adopted by the Council within the framework of the procedures referred to in Articles 189b and 189c TEC is, moreover, forwarded to the European Parliament only if the text is available in the eleven official languages.

As stated above, the normal languages rules apply in the **fields under Title V TEU (CFSP)**. This was emphasized in a statement annexed to the TEU. <sup>(1)</sup> In the CFSP field, however, Council acts may be adopted by a simplified written procedure (known as COREU, Article 8(4) CRP) <sup>(2)</sup> and the CFSP is, typically, a field in which urgent situations may arise justifying recourse to the derogation provided for by Article 10(1) CRP. The rule to be followed is as follows: in principle, the normal language rules apply to the adoption of any act in the CFSP field, in particular those

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<sup>(1)</sup> Declaration No 29 on the use of languages in the field of the common foreign and security policy, annexed to the Final Act of the TEU.

<sup>(2)</sup> See Chapter II, section 3, below for further details concerning this procedure.

having a legal scope (joint action or common position). However, the Council may decide, on a case-by-case basis, on grounds of urgency, to act in the absence of texts in all the official languages, when it does not intend to publish the text of its decision in the Official Journal of the European Communities (hereinafter OJ). It is desirable that this special urgent situation be briefly mentioned in a recital of the act justifying in each individual case the waiving of the language rules with a view to adopting the act concerned.

In practice, whenever the Council has recourse to the waiver provided for in Article 10 CRP:

- this must be indicated in the documents submitted to it (report to the Council, "I/A" item notes);
- the decision to have recourse to the waiver must be recorded in the Council minutes;
- any decision to postpone publication or notification of the act pending availability of the text in the eleven official languages must also be noted;
- where appropriate, the missing language versions must subsequently be adopted by the Council.

## Chapter II – Council decision-making

### 1. Voting rules (Article 7 CRP)

According to Article 7(1) CRP, the **decision to take a vote** is taken by the Presidency, which judges its desirability, even if it may be obliged to do so by a simple majority of the Council (see below). However, as stated above, <sup>(1)</sup> a set of rules is applied for setting the provisional agenda which makes "surprise" voting impossible. The fact that it is indicated on the provisional agenda that a vote may be taken on an item does not imply that the vote will necessarily be taken. The Presidency may postpone the vote if it observes that the conditions have not been met.

Article 2(2) CRP provides that any member of the Council or the Commission may request a vote. In that case, the Presidency is obliged to open a voting procedure provided that a majority of the Council's members so decides. That provision merely reflects the unwritten general rule that the Presidency is always "in the Council's hands": it can always override a procedural decision by its President.

Pursuant to Article 7(2) CRP, the members of the Council vote in the order of the Member States laid down in Article 27 of the ECSC Treaty, Article 146 TEC and Article 116 of the Euratom Treaty, <sup>(2)</sup> beginning with the member who, according to that order, follows the member holding the office of President. That practice is not always followed; it is specifically followed in circumstances where the vote requires a degree of solemnity or where delegations' positions are not sufficiently clear. Most frequently, at the end of the discussion, the Presidency asks the members voting for, against or wishing to abstain to identify themselves.

A member of the Council may wish to receive confirmation from his/her national authorities of the position to be adopted or the internal formalities for defining the position may not be completed.

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<sup>(1)</sup> See Chapter I, section 2: "Agenda".

<sup>(2)</sup> This is the order laid down for holding the Presidency of the Council in turn (see the Council Decision of 1 January 1995 determining the order in which the office of President of the Council shall be held, OJ No L 1, 1.1.1995, p. 220).



He/she will then enter a reservation which may subsequently be withdrawn; the reservation must be withdrawn during the same Council meeting. If the reservation has not been withdrawn at the end of the meeting and the required majority has not been achieved as a result, the item is not adopted. It is deleted from the agenda and is included on the agenda for another meeting. Apart from the written procedure, voting is carried out only within the Council.

In cases where adoption of an act is subject to a proposal from the Commission, at some stage in the procedure **the Commission** may be unable to agree to the amendments made to its proposal by the Council. That has an influence on the Council's voting rules because, under Article 189a(1) TEC, the Council must act unanimously if it wishes to adopt an act constituting an amendment to the Commission proposal. In practice, therefore, the Council votes only when the Commission has clearly adopted a position on any amendment of its proposal.

Finally, the Council often takes an indicative vote in order to define its members' positions concerning the item under consideration. That indicative vote is not a vote within the meaning of the Treaty and has no legal effect. Formal adoption must therefore take place in due course <sup>(1)</sup>.

The **voting procedure** within the Council is provided for by Article 148 of the EC Treaty.

Paragraph 1 states the principle that, failing a specific provision in the Treaty, the Council shall act by a majority of its members, i.e. at present a **majority** of eight members. Such is the case, for example, of adoption of the CRP (Article 151(3) TEC), requests for studies or proposals addressed to the Commission (Article 152 TEC) or decisions taken pursuant to Article 213 TEC. <sup>(2)</sup> However, the Treaty rarely fails to provide for other rules and acting by a majority of members remains exceptional, apart from procedural decisions which are always taken by a simple majority, as are the adoption of replies to be given to parliamentary questions, decisions on consultation or further consultation of the European Parliament, etc.

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<sup>(1)</sup> See Chapter II, section 3 below for voting by the written procedure.

<sup>(2)</sup> See Judgment of 9 November 1995, Case C 426/93 Germany v. Council [1995] ECR I-3723.

With regard to a **unanimous vote**, Article 148(3) TEC provides that abstentions by members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity. <sup>(1)</sup>

In addition to cases in which the Council adopts an act amending a Commission proposal (Article 189a(1) TEC), unanimity is required by a number of Articles of the TEC, such as: social security (Article 51), harmonization of indirect taxation (Article 99), legislative harmonization (Article 100), the framework programme of research and development (Article 130j), certain measures to protect the environment (Article 130s), certain actions necessary for attaining one of the objectives of the Community (Article 235), certain measures in the fields of social policy, culture, education, health, industry, etc. <sup>(2)</sup>

Voting by a **qualified majority** is also a voting procedure frequently provided for by the EC Treaty.

The votes of the Council members are weighted as follows:

- Germany, France, Italy, United Kingdom: 10 votes each;
- Spain: 8 votes;
- Belgium, Greece, Netherlands, Portugal: 5 votes each;
- Austria, Sweden: 4 votes each;
- Denmark, Ireland, Finland: 3 votes each;
- Luxembourg: 2 votes.

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<sup>(1)</sup> Acts of the Representatives of the Governments of the Member States meeting within the Council are adopted by "common accord", which implies the agreement of **all** the Member States. They are not Council acts. The TEC, for example, provides in a number of provisions for the adoption of an act by the Member States themselves or their Governments rather than the Council (see Article 8c concerning diplomatic protection of EU citizens, Article 158 on appointment of Members of the Commission, Article 167 concerning the appointment of Judges and Advocates-General of the Court of Justice, etc.).

<sup>(2)</sup> See the exhaustive list in the Council Report on the functioning of the TEU, Brussels, 1995, page 54.

There are two arrangements for voting by a qualified majority. The majority is 62 votes (out of 87) where the Council acts on a Commission proposal <sup>(1)</sup> and 62 votes in favour, cast by at least 10 members, in other cases, for example in budgetary matters where the Commission draws up only a preliminary draft budget or for recommendations concerning an excessive deficit in the context of EMU (Article 104c(13) TEC) or where the Council acts by a qualified majority under Titles V and VI TEU.

Finally, two texts known as the "Luxembourg compromise" and the "Ioannina compromise" must be mentioned.

The "empty chair" policy practised by France for seven months in 1965 led to the adoption of a text generally known as the "**Luxembourg compromise**". That political statement contained the following paragraph:

*"Where, in the case of decisions which may be taken by majority vote on a proposal of the Commission, very important interests of one or more partners are at stake, the Members of the Council will endeavour, within a reasonable time, to reach solutions which can be adopted by all the Members of the Council while respecting their mutual interests and those of the Community, in accordance with Article 2 of the Treaty."*

That paragraph is followed by the following divergent assessments:

*"With regard to the foregoing paragraph, the French delegation considers that where very important interests are at stake the discussion must be continued until unanimous agreement is reached. The six delegations note that there is a divergence of views on what should be done in the event of a failure to reach complete agreement."*

The "Luxembourg compromise" – which has no legal value and can have no effect unless a sufficient number of Council members to form a blocking minority join the member who avails himself of the "compromise" – is therefore a political rather than a legal weapon to which reference is sometimes made but which is very rarely invoked operationally.

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(1) The fact that the Commission does not support a text put to the vote which requires a qualified majority does not attenuate that requirement but adds the additional condition of unanimity to that of a qualified majority (Article 189a(1) TEC).

The texts known as the "Ioannina compromise" arose from the change in the minimum number of votes required for a qualified majority as a result of the enlargement to include Austria, Finland and Sweden. Certain Member States considered that the new weighting of the votes could, in certain cases, result in States grouping together a considerable proportion of the Community's population being defeated. After difficult discussions, a solution called the "Ioannina compromise" was found, which took the form of a Council Decision of 29 March 1994 <sup>(1)</sup>. That Decision gives the "Ioannina compromise" legal status, unlike the "Luxembourg compromise". It provides that if the Members of the Council representing 23 to 25 votes indicate their intention to oppose a decision, the Presidency will do all in its power to reach, within a reasonable time, a satisfactory solution that could be adopted by at least 65 votes. This procedure is subject to compliance with the Treaties, which means that where the Treaty sets the Council a deadline for acting, the search for a solution cannot lead to that deadline being postponed. Furthermore, and above all, it is also subject to the CRP, which means that Article 7 CRP applies and that at any time a simple majority of States may request and obtain the taking of a vote. A minority of 23 to 25 votes cannot therefore in any case delay the taking of a decision if it does not win the support of a majority of the Member States.

## **2. Quorum and delegation of the right to vote (Articles 3 and 7 CRP)**

The only amendment to the CRP since 6 December 1993 concerns the **quorum**. Following the accession of Austria, Finland and Sweden, the presence of eight members of the Council is required to enable the Council to vote.

This quorum requirement must be read in conjunction with the first paragraph of Article 146 TEC, which provides that the Council consists of a representative of each Member State at ministerial level, authorized to commit the government of that Member State. For the Council to be able to take a vote, there must therefore be at least eight representatives of Member States who fulfil the conditions of Article 146 of the EC Treaty. This therefore constitutes an inherent limit upon the delegation of the right to vote which will be examined below.

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<sup>(1)</sup> OJ No C 105, 13.4.1994, p. 1, as last amended on 1 January 1995 (OJ No C 1, 1.1.1995, p. 1).

The quorum rule, normally limited to the final stage of decision-making, i.e. voting within the Council, nevertheless also inspires the practice of preparatory Council bodies which, in practice, generally suspend their discussions if fewer than eight delegations are present.

**Delegation of the right to vote** is provided for both in Article 150 TEC and Article 7(3) CRP. Article 150 TEC provides that a member of the Council may act on behalf of not more than one other member. Article 7(3) CRP specifies that delegation of the right to vote may be made only to another member of the Council.

Finally, the form of delegation is not subject to any formality. In practice, the position of the member concerned is expressed by the Permanent Representative of the Member State and the vote is deemed to have been exercised by a member of the Council.

### **3. Written procedure (Article 8 CRP)**

Two possibilities exist for **deciding on recourse to the written voting procedure**:

- the decision may be taken beforehand, unanimously, at a Council or Coreper meeting;
- failing that, the Presidency may propose recourse to the written procedure by means of the written procedure itself. In that case, the decision to agree to recourse to the written procedure will form part of the procedure itself: all the members of the Council must agree to recourse to the written procedure before expressing their substantive opinions.

In both cases, the Commission must also agree to recourse to the written procedure if it concerns a subject referred to the Council by the Commission.

Where a decision has already been taken within the Council or Coreper to adopt the written procedure, the only question put in writing to members of the Council will be whether they agree to adopt the act concerned.

However, if recourse to the written procedure has not been decided beforehand within the Council or Coreper, the members of the Council and, where appropriate, the Commission must reply to the first question concerning recourse to the written procedure and the members of the Council must

express their positions on the second question concerning adoption of the act.

In order to speed up the **written procedures**, replies must be addressed to the General Secretariat official responsible for the dossier. Replies must of course be written (normally sent by fax or telex); oral replies are not sufficient in any case.

If the deadline for replying has not already been agreed within the Council or Coreper, it must be set depending on the urgency of the matter. The importance of meeting the deadline must be emphasized if the act must be adopted before a specific date. If replies are delayed, the General Secretariat will issue a reminder. If the delay continues, an assessment must be made in each individual case of a reasonable period after which the procedure must be concluded and its outcome considered as being negative.

If the Council or Coreper has decided to have recourse to the written procedure for an act which must be adopted by a qualified or simple majority, the conditions for adopting the act are met as soon as the number of positive replies received tallies with the number of votes required.

However, if it was necessary to put the question of recourse to the written procedure, a positive reply to this question will be required from all the members of the Council (**unanimity**), and from the Commission if the procedure concerned a matter which it brought before the Council. Adoption of the act is subject to the relevant voting rules.

Once the General Secretariat has ensured that the conditions have been fulfilled for adopting the act which was the subject of the written procedure, it takes the necessary steps to ensure the signing of the act and its publication in the OJ and/or the notification of the act to its addressees.

It is the General Secretariat's responsibility to conclude written procedures and to state their results.

On that occasion, all members of the Council and, where appropriate, the Commission are informed of any unilateral statements made by the other members of the Council or the Commission to enable them to decide if they wish to repond to them. Neither the conduct nor the completion

of the written procedure for adoption of the act concerned is affected by such statements.

Acts adopted by the written procedure are the subject of press releases drawn up on an ad hoc basis by the General Secretariat's press office. On that occasion, the outcome of the vote is made public if it is an act covered by the Annex to the CRP or a common position in the cooperation or co-decision procedures and if a majority of members of the Council have not objected to the outcome of the vote being made public.

Explanations of votes are also made public in compliance with the CRP if requested by the member of the Council and if the outcome of the vote is made public. The other members of the Council must be informed that an explanation of the vote is likely to be made public in order to give them an opportunity to voice their opposition or request that any reactions they have to the explanation of the vote also be made public.

The General Secretariat produces a monthly summary of acts adopted by the written procedure, which also includes any statements and explanations of votes.

Further, the General Secretariat's archives conserve at least:

- the communication opening the written procedure and the document on which the procedure was based and any Council statements;
- the replies from members of the Council and, where appropriate, the Commission together with any unilateral statements;
- the duly signed original of the act adopted by the Council.

Under the **simplified written procedure** (COREU), a decision is deemed to be adopted unless a member of the Council objects before expiry of the deadline set, in which case the item will be included on Coreper's agenda, as usual.

Recourse to the COREU procedure is provided for explicitly in Article 8(4) of the CRP for implementing the common foreign and security policy (CFSP).

The Council also agreed to apply a simplified written procedure for deciding on consultation of the European Parliament, the Economic and Social Committee, the Court of Auditors and the Committee of the Regions, <sup>(1)</sup> with regard to Commission proposals. The procedure applies to consultation of the Court of Auditors only if its obligatory consultation is provided for in the legal basis laid down.

In the case of optional consultation of the European Parliament, the Commission's suggestions on consulting the European Parliament are not automatically followed up. Cases in which the Council must act urgently must be the subject of a special examination. The General Secretariat must make suitable suggestions in this context, in particular on the reasonable period to be allowed for the European Parliament to deliver its Opinion, after which the Council intends to act even if does not receive that Opinion.

Similar considerations apply to the procedure for deciding on consultation of the Economic and Social Committee and the Committee of the Regions.

In cases of extreme urgency or other exceptional cases (except for certain important acts with regard to which the Council has confirmed its intention to consult the European Parliament), it will be suggested that optional consultation should not be carried out, delegations' silence implying their agreement not to carry it out.

Finally, the **streamlined written procedure** is also used to approve the opening of the mission to the European Union of a non-member State or the accreditation of the head of such a mission. In that case, the members of the Council have one month to raise any objections.

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<sup>(1)</sup> Council Decisions adopted on 15 October 1973, 19 November 1973, 8 May 1978 and 11 July 1994 respectively.



## **Chapter III – Council acts and their form**

### **1. Signing of acts (Article 11 CRP)**

Just like Article 191 TEC Article 11 CRP provides for the obligation to sign acts adopted by the Council, alone or together with the European Parliament under the co-decision procedure. Those acts must be signed by the President-in-Office of the Council at the time of their adoption and by the Secretary-General of the Council.

Article 11 lays down the stage at which signing by the President of the Council must take place, namely at the time of the adoption of the act; the Secretary-General may sign at a later stage.

In practice, the President of the Council signs the last page of the original text of the act (this is a multilingual page); signing takes place at the Council meeting which adopted the act concerned. The Secretary-General subsequently signs the same page of the text, the original of which is forwarded to the Council General Secretariat's archives, where it is kept in a safety vault.

The last sentence of Article 11 enables the Secretary-General to delegate his signature to Directors-General of the General Secretariat. The Secretary-General has not made use of this option to date.

### **2. Title and form of regulations (Articles 12 and 13 CRP)**

Article 12 specifies the various features which must be included in the **title** of Regulations adopted by the Council, alone or together with the European Parliament under the co-decision procedure:

- the word "Regulation";
- the serial number;
- the date of adoption; and
- indication of the subject-matter.

These are features which must be included in the regulation and which serve to identify it; moreover, acts adopted by the Council, alone or under the co-decision procedure with the European

Parliament, also contain the name(s) of the institution(s) which adopted the act and an indication of the Community or Communities concerned.

The structure of the **preamble** of regulations adopted by Council, alone or under the co-decision procedure with the European Parliament, is specified in Article 13 CRP, which thereby reflects the obligation to state the reasons as laid down by Article 190 of the EC Treaty (or Article 162 of the Euratom Treaty). The preamble of the regulation incorporates the features provided for by Article 13 CRP in the order followed therein.

With regard to citations, it should be noted that the legal bases of the regulation and the prior procedural acts are set out in that order and preceded by the words "Having regard to".

Citations are followed by recitals which constitute the reasons on which the regulation is based and are introduced by the word "Whereas". <sup>(1)</sup>

### 3. Structure of Regulations (Article 14 CRP)

Article 14(1) CRP organizes the **enacting terms** of the regulation. It is subdivided as follows: the regulation contains articles which may be grouped into chapters or sections. This rules out any other denomination (such as rule or principle) for the components of the enacting terms of the regulation.

To take account of the stipulation in Article 191 of the EC Treaty (or Article 163 of the Euratom Treaty) concerning the **entry into force** of regulations, Article 14(2) CRP provides that if the Council, alone or under the co-decision procedure with the European Parliament, wants a regulation to enter into force on a date other than the 20th day following its publication in the OJ, it will stipulate the date in the last article of the regulation. If appropriate, that article will contain details concerning application of the regulation.

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<sup>(1)</sup> With regard to recitals, the following statement concerning Articles 13 and 16 CRP, published in the OJ, was entered in the Council minutes:  
*"The Council notes the undertaking given by the Commission in the Presidency conclusions of the Edinburgh European Council to justify in a recital in each of its proposals the relevance of the proposal with regard to the principle of subsidiarity."*

According to Article 14(3) CRP, the **last article** of a regulation is followed by a form of words reflecting the general scope and the binding character of the regulation as provided for by Article 189 TEC (or Article 161 of the Euratom Treaty).

Finally, the **place and date of adoption** of the regulation are indicated. Council regulations are normally "Done at Brussels" apart from those adopted in April, June and October, periods during which Council meetings are held in Luxembourg <sup>(1)</sup>.

Regulations adopted by the European Parliament and the Council under the co-decision procedure give Brussels, Luxembourg or Strasbourg as the place of signature, depending on the case. Only one date of signature is given for those regulations; where the Presidents of the two institutions do not sign on the same day, the date of the last signature will appear in the regulation.

The name(s) of the signatory or signatories appears at the end of the enacting terms: depending on the case, the name of the President of the European Parliament (on the left-hand side at the foot of the enacting terms) and that of the President of the Council (on the same line on the right-hand side), or else only the name of the President of the Council. This is the layout of the text of the regulation as it appears in the OJ. The name of the Secretary-General (who, pursuant to Article 11 CRP, also signs the text of the Regulation adopted) does not appear in the OJ.

#### **4. Title and form of other acts of secondary legislation (Article 16 CRP)**

Like Article 12 CRP concerning regulations, Article 16 CRP organizes the **title, preamble and enacting terms** of other Council acts. It therefore provides that directives, decisions, recommendations and opinions should respectively include the word "Directive", "Decision", "recommendation" or "opinion" in their titles.

Article 16 CRP makes no mention, however, of the other features (serial number, date of adoption, subject matter) which must be included in the title of regulations pursuant to Article 12 CRP. In practice, however, all Council acts include these features enabling them to be identified.

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(1) For the Council's places of work, see Chapter I, section 1, above.

For the preamble and enacting terms of directives and decisions, Article 16 refers to Article 13 and 14 CRP as applicable to those acts. <sup>(1)</sup>

With regard to the **quality of drafting** of legislation, in its Resolution of 8 June 1993 <sup>(2)</sup> the Council laid down a number of guidelines to make Community legislation as clear, simple, concise and understandable as possible.

In that Resolution, the Council asked the Council Legal Service to use those guidelines to formulate drafting suggestions for the attention of the Council and its subsidiary bodies, which frequently occurs in practice.

#### **5. Title and form of instruments under Titles V and VI TEU (Article 17 CRP)**

Article 17 CRP defines the title to be borne on one hand by common positions and joint actions adopted respectively on the basis of Articles J.2 and J.3 TEU (Article 17(1) CRP) and on the other hand by common positions, joint actions and conventions on the basis of Article K.3 of the TEU (Article 17(2) CRP).

Apart from the indication of the legal basis, the **titles of joint actions and common positions** are the same, whether a field under Title V or Title VI of the TEU is concerned, namely:

- "Common position defined by the Council on the basis of Article [J.2 or K.3] of the Treaty on European Union";
- "Joint action adopted by the Council on the basis of Article [J.3 or K.3] of the Treaty on European Union".

The identical terms which come from the TEU itself emphasize that a common position or a joint action is of the same nature, whether adopted within the framework of Title V or Title VI.

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<sup>(1)</sup> For example: the wording concerning the general scope and binding character of the act referred to in Article 14(3) CRP appears only in regulations; in directives, the last article indicates the Member State(s) to which the directive is addressed.

<sup>(2)</sup> Published in OJ No C 166, 17.6.1993, p. 1 (Annex VI).

The **title of conventions** reads as follows:

- "Convention drawn up on the basis of Article K.3 of the Treaty on European Union".

## **6. Publication of acts (Articles 15 and 18 CRP)**

Pursuant to Article 15 CRP, regulations, directives and decisions adopted by the Council under the co-decision procedure with the European Parliament and Council regulations and Council directives addressed to all the Member States must be published in the OJ.

Publication in the OJ is a condition of applicability of those acts and their entry into force may be subject to it (Article 191 TEC).

The task of publishing those acts is assigned to the Council General Secretariat, which must also ensure publication in the OJ of the Council's common positions and the statement of the reasons which accompanies those common positions.

The four last paragraphs of Article 18 CRP state which acts are published in the Official Journal of the European Communities and, where appropriate, under which Council decision-making procedure. **Paragraphs 3, 4 and 5** of Article 18 CRP concern publication of various acts such as common positions and joint actions, conventions, implementing measures and decisions, recommendations and certain directives. **Paragraph 6** concerns the possible publication of decisions taken by a body set up by an agreement to which the Community is party.

The OJ is divided into two series, "L" and "C", the "L" series being itself divided into two categories (I and II). Acts having a binding legal effect are published in the "L" series. Category "L.I" comprises acts whose publication is a condition of their applicability and category "L.II" comprises acts whose publication is not a condition of their applicability. The "C" series contains information and notices.

The following acts are published in the Official Journal, **by a decision of the Council acting unanimously in each case:**

- common positions on the basis of Article J.2 or K.3 TEU (part L.II of the OJ);
- joint actions on the basis of Article J.3 or K.3 TEU (part L.II of the OJ);
- measures implementing joint actions (Article J.3 or K.3) or conventions (Article K.3) (part L.II of the OJ);
- other acts, such as resolutions or conclusions adopted within the framework of the TEC or the TEU, and recommendations based on Titles V and VI TEU ("C" series of the OJ).

It is therefore impossible for the Council to put itself under an obligation in advance, by a general decision, to publish all future instruments in a particular field. Publication of one of the acts mentioned above must be the subject of a unanimous decision in each case. The Council may, however, ensure publication of a body of instruments adopted in the past, by unanimous decision. <sup>(1)</sup> It is also possible to provide in a statement that when adopting acts in a specific field, the Council will decide in principle that they will be published except in cases where, at the request of one of its members, the Council notes that the unanimity required by Article 18(3) CRP has not been secured. <sup>(2)</sup>

The following acts are published in the Official Journal following a **decision by the Council acting unanimously:**

- directives other than those referred to in Article 191(1) and (2) TEC, i.e. directives which are not adopted by the co-decision procedure and directives which are not of general application (part L.II of the OJ);
- decisions other than those adopted by the co-decision procedure (part L.II of the OJ);

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<sup>(1)</sup> See the Decision adopted by the Council at its meeting on 23 November 1995 to publish a number of acts and other texts adopted in the field of asylum and immigration since the entry into force of the TEU.

<sup>(2)</sup> See statement in the Council minutes of 23 November 1995 on acts in the field of asylum and immigration.

- recommendations based on the EC Treaty (part L.II of the OJ);
- conventions other than those provided for by Article K.3 TEU (such as those based on Article 220 of the EC Treaty) ("C" series of the OJ with, on their entry into force, mention of that entry into force in the "L" and "C" series of the OJ, with reference to the serial number of the "C" series OJ in which the text of the convention was published).

With regard to those conventions, pursuant to Article 18(5) CRP it is also possible to publish conventions which have not been signed by all the Member States (Article 18(5) CRP refers to conventions "signed between the Member States" and not to conventions signed by all the Member States). Publication covers the texts of the conventions, including the recitals and the final provisions, and the date and place of their opening for signature <sup>(1)</sup>.

The following are published in the Official Journal **following a decision by the Council acting by a simple majority** when the international agreement concerned is concluded:

- decisions taken by any body set up by an agreement concluded between the EC and one or more States or international organizations (part L.II of the OJ).

In this connection, the Council agreed at its meeting on 19 and 20 December 1994 that, when future cooperation or association agreements were concluded which provided for a body vested with powers of decision, the decisions of that body would be published in the Official Journal. It also decided to instruct the representatives of the Communities to enter into negotiations with the representatives of the States concerned to secure their agreement to such publication.

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<sup>(1)</sup> Certain conventions, such as the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters or the Convention of 10 March 1995 on Simplified Extradition Procedure between the Member States of the European Union, are accompanied by an explanatory report which is also published in the "C" series of the OJ. That report is generally drafted by an expert who took part in the negotiations for the convention.

The following acts are **automatically** published in the Official Journal, without a prior decision by the Council <sup>(1)</sup>:

- conventions based on Article K.3 TEU ("C" series of the OJ, with their entry into force being indicated at that time in the "L" and "C" series of the OJ, with reference being made to the serial number of the "C" series OJ in which the text of the convention was published). By analogy, the Council decision drawing up that convention is also published;
- regulations, directives and decisions adopted by the co-decision procedure (see Article 191(1) TEC) (part L.I of the OJ);
- Council or Commission regulations (see Article 191(2) TEC) (part L.I of the OJ);
- Council or Commission directives addressed to all the Member States (see Article 191(2) TEC) (part L.I of the OJ);
- common positions and statements of reasons for acts adopted by the co-decision procedure (Article 189b TEC) and by the cooperation procedure (Article 189c TEC).

#### **7. Notification of acts (Article 18 CRP)**

The first two paragraphs of Article 18 CRP instruct the Secretary-General of the Council, or a Director-General acting on his behalf, to give notification of or transmit a number of acts to the Member States and the Commission.

Under **paragraph 1**, the Secretary-General of the Council or a Director-General acting on his behalf notifies the addressees of the following acts:

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<sup>(1)</sup> The obligation of publication by the Secretary-General laid down in the first sentence of Article 15 CRP applies by analogy to international agreements which are binding on the institutions and the Member States, have legal effects in all the Member States and create rights for individuals which they can invoke in legal proceedings.



- Council directives other than those referred to in Article 191(2) TEC, i.e. directives which are not addressed to all the Member States (directives which are not of general application);
- Council decisions;
- Council recommendations;
- common positions of the Council on the basis of Articles J.2 or K.3 TEU;
- joint actions of the Council on the basis of Articles J.2 or K.3 TEU.

Under **paragraph 2**, the Secretary-General or a Director-General acting on his behalf sends authentic copies of the following acts to the Governments of the Member States and to the Commission:

- directives which are not of general application;
- Council decisions;
- Council recommendations.

For all acts which have not been mentioned, the practice is to inform the Member States and the Commission.

Pursuant to the possible delegation of the Secretary-General's powers to the Directors-General of the Council Secretariat, by Decision No 351/84 of 11 April 1984, the Secretary-General authorized the Directors-General or, if prevented from attending to their duties, the Directors in order of seniority in the Directorate-General concerned, to sign on his behalf the notifications and communications of Council acts provided for in the first two paragraphs of Article 18 CRP within the fields of competence of the respective Directorates-General.

## Chapter IV – Structure of the Council

### 1. Coreper and committees or working parties (Articles 19 and 20 CRP)

The **Permanent Representatives Committee (Coreper)** was originally set up by the CRP in 1958, modelled on the Coordination Committee (COCOR) in the field of the ECSC Treaty. The two bodies were merged in 1967 by Article 4 of the Merger Treaty, which mentioned Coreper for the first time within the framework of the Treaties.

As indicated by its name, Coreper is **composed** of the Permanent Representatives of the Member States to the European Union. Since 1962, however, Coreper has been divided into **two parts**, the first composed of Deputy Permanent Representatives and the second composed of the Permanent Representatives themselves. Coreper's division into two parts is reflected in the first sentence of Article 19(3) CRP concerning the chairing of Coreper meetings.

Coreper (Part 1) prepares the work of a large number of Council meetings (agriculture, internal market, labour and social affairs, environment, transport, energy, fisheries, education, etc.). Coreper (Part 2) prepares the work of the General Affairs (external economic relations, CFSP, institutional and general affairs), Economic and Financial Affairs, Justice and Home Affairs, Budget, Development meetings, etc.

Coreper "is responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council" (Article 151(1) TEC, included in the first sentence of Article 19(1) CRP). <sup>(1)</sup> Coreper's **main role** is to coordinate the work of the various Council meetings and to endeavour to reach agreement at its level to be submitted to the Council for adoption.

Its coordinating role is essential for ensuring the consistency of the work of the Council which, while being a single legal entity, holds about twenty kinds of specialized meetings (Transport Council, Internal Market Council, Environment Council, etc.). Coreper is responsible for ensuring

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<sup>(1)</sup> The wording of Article 30(1) of the ECSC Treaty and Article 121(1) of the Euratom Treaty is the same.

suitable presentation of the dossiers to the Council. It prepares all Council discussions, assesses the aspects of the dossiers and defines the options available.

Coreper's role is also essential as a body enabling agreement to be reached at its level that will in general be confirmed by the Council. In December 1974, the Heads of State and Government strengthened that role by agreeing to give the Permanent Representatives "*greater latitude so that only the most important political problems need be discussed in the Council*".

Coreper's central role is illustrated by the fact that all the items included on the Council's agenda must be examined beforehand by Coreper (Part 1 or 2) unless, in an emergency, the Council decides unanimously to consider the matter without prior examination or Coreper itself has decided (by a simple majority) to refrain from prior examination (Article 19(1) CRP).

It should, however, be emphasized that broad conclusions worked out by Coreper can always be called into question by the Council, which alone has decision-making power. Coreper is therefore neither an EU institution nor a decision-making body with its own powers. It is a preparatory body or, as recently described by the Court of Justice, "*an auxiliary body of the Council, for which it carries out preparation and implementation work. Coreper's function of carrying out the tasks assigned to it by the Council does not give it the power to take decisions which belongs, under the Treaty, to the Council*". (1)

With regard to its **functioning** Coreper, Part 2 and Part 1, is presided over respectively by the Permanent Representative and the Deputy Permanent Representative of the Member State which holds the Presidency (first sentence of Article 19(3) CRP).

Coreper's agenda, like the Council's, is divided into two parts: I and II. Part I, like part "A" of the Council's agenda, includes items which do not in principle require discussion whereas Part II, like Part "B" of the Council's agenda, implies discussion. If Coreper reaches agreement on a "II" item on its agenda, that item will therefore become an "A" item on the Council's agenda.

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(1) Paragraphs 26 and 27 of the judgment of 19 March 1996, Case C-25/94 *Commission v Council* (not yet published).

Coreper, Parts 1 and 2, holds meetings every week. Preparations for its work are made the day before by the personal assistants of the Coreper members who meet respectively under the name of the Mertens Group for Coreper Part 1 and the Antici Group for Coreper Part 2. The Antici Group (named after its first Chairman) was set up in 1975 to review the agendas for Coreper Part 2 and settle technical and organizational details. That preparatory stage also sometimes makes it possible to have an initial idea of the positions which the various delegations will adopt at the Coreper meeting. The Mertens Group (also named after its first Chairman) was set up for the same purpose in 1993.

The Treaties set up certain **specific committees** responsible for coordinating activities in a particular field. However, given the institutional unity provided for in Article C TEU, as reflected in Articles J.11 and K.8 TEU (which render applicable to Titles V and VI various provisions of the TEC, in particular Article 151), those committees are without prejudice to Coreper's central role. Each provision of the Treaty setting up one of those committees specifically reserves application of Article 151 TEC, i.e. Coreper's general responsibility for preparing the work of the Council. Reports from those committees must be available in good time prior to the Coreper meeting at which they are to be examined (Article 20 CRP).

Unless the Council decides otherwise, those committees are chaired by a delegate of the Member State which holds the Presidency (second sentence of Article 19(3) CRP). However, for the preparation of meetings of Council compositions which meet only once during the first half of a six-monthly period, the meetings of those committees held during the preceding six months may be chaired by a delegate of the Member State which will hold the Presidency during the following six months (last sentence of Article 19(3) CRP). Use has not been made of that possibility.

The **Monetary Committee**, set up by Article 109c TEC, is responsible for keeping under review the monetary and financial situation of the Member States and may deliver opinions. It is also responsible, without prejudice to Article 151 TEC, for contributing to the preparation of the work of the Council in various fields such as safeguard measures with regard to movement of capital or other aspects, coordination of Member States' economic policies, etc. A specific reminder of that

Committee's special role is given in a footnote to Article 19 CRP. Its chairmanship is not subject to the normal rules of rotation every six months (<sup>1</sup>).

A special committee (known as the **Article 113 Committee**) was set up by Article 113(3) TEC. That Committee has the task of assisting the Commission when, having received authorization by the Council, it conducts negotiations to conclude an international agreement within the framework of common commercial policy.

The **Political Committee**, set up by Article J.8(5) TEU, is composed of the Political Directors of Member States' Ministries of Foreign Affairs. That Committee is a body for consultation and conciliation which monitors and analyses the international situation and its development in the areas covered by CFSP. It contributes to the definition of policies by delivering opinions, all of which is without prejudice to Article 151 TEC.

The coordinating committee in the fields covered by Title VI TEU (known as the **K.4 Committee**), set up by Article K.4 TEU, gives opinions and contributes to the preparation of the Council's discussions in the fields covered by Title VI TEU and the areas referred to in Article 100c TEC (visas), all of which is without prejudice to Article 151 TEC.

Mention may also be made of the **Special Committee on Agriculture (SCA)**, set up in May 1960, which is specifically responsible for preparing many matters falling within the scope of the Agriculture Council. That Committee therefore plays the same role in very technical agricultural spheres as Coreper does in the other spheres. The items which it has examined are therefore included directly on the agendas for the Agriculture Council.

To help in preparing the Council's work, Coreper may issue instructions for setting up **committees or working parties** (Article 19(2) CRP). Those working parties are composed of delegates from each Member State. They may be more or less permanent as required. To date, Coreper has set up approximately 200 working parties in the various areas of the Council's activities.

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(<sup>1</sup>) Pursuant to Article 7 of that Committee's rules of procedure, the Chairman is appointed by the Committee itself from among its members. His term of office consists of two years and may be renewed (see Council Decision of 18 March 1958, OJ No 17, 6 October 1958).

As with the committees set up by the Treaties, these committees and working parties are chaired, unless Coreper decides otherwise, by a delegate of the Member State which will hold the Presidency during the following six months (last sentence of Article 19(3) CRP). When preparing for a meeting of a Council composition which meets only once during the first half of a six-month period, the meetings of committees and working parties held during the preceding six months may, however, be chaired by a delegate of the Member State which will hold the Presidency during the following six months (last sentence of Article 19(3) CRP).

Reports from Council committees and working parties must be available in good time prior to the Coreper meeting at which they are to be examined. It is the task of the Presidency, assisted by the General Secretariat, to organize and plan the meetings of the various working parties. To do so, before the start of its six-monthly Presidency, it draws up a timetable of the meetings it plans to hold. That timetable must be adjusted in accordance with the progress of proceedings (Article 20 CRP).

If a working party reaches agreement on a dossier, the item concerned is included in Part I of Coreper's agenda and subsequently in Part "A" of the Council's agenda. However, this never prevents any of the members of Coreper and subsequently the Council, or the Commission, from expressing their opinions when those items are being approved and to have statements entered in the Council minutes (Article 2(6) CRP), or even to retract their delegation's earlier provisional agreement.

## **2. The Secretary-General and the Council General Secretariat (Article 21 CRP)**

At its first meeting in September 1952, the ECSC Council set up a secretariat under the direction of a Secretary-General. When the two EC and Euratom Treaties entered into force, the General Secretariat extended its activities accordingly. The Secretariat and the Secretary-General were therefore mentioned in the successive versions of the Council's Rules of Procedure until the Treaty on European Union added an explicit reference to the Secretary-General and the General Secretariat in Article 151(2) TEC <sup>(1)</sup>.

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<sup>(1)</sup> The wording of Article 30(2) of the ECSC Treaty and Article 121(2) of the Euratom Treaty is the same.

Article 21(1) and the first subparagraph of Article 21(2) CRP replicate the text of Article 151(2) TEC. The principle of the single Council therefore also applies to its General Secretariat, which assists the Council and its preparatory bodies in all their activities, including those provided for under Titles V and VI TEU (CFSP and JHA).

The **Secretary-General of the Council** is appointed by the Council unanimously (in general for a renewable period of five years). He is in charge of the General Secretariat and, under the Council's authority, takes all necessary steps to ensure its proper functioning. Mr Jürgen Trumpf has occupied the post of Secretary-General since July 1994.

At the time of the appointment of his predecessor, Mr Ersbøll, in 1980, the Council emphasized in the recitals of its Decision, <sup>(1)</sup> the great importance of the office of Secretary-General for the proper functioning of the Council, in addition to the necessary contribution of the members of the Council and the Presidency. One of those recitals lists the aspects necessary for such proper functioning and hence the role that the Secretary-General is required to play in this context. It mentions:

- continuity in the work of the Council during successive Presidencies;
- coordination of the work of the Council in its various formations;
- coherence in the work of the subsidiary bodies of the Council;
- efforts to produce more Council decisions by compromise through preparatory contacts with delegations;
- significant alleviation of the Council's workload by way of preliminary agreement being reached in Coreper on a larger number of issues.

In principle, the Secretary-General attends all Coreper (Part 2) meetings and all Council meetings prepared by Coreper (Part 2) and all European Council meetings. His role is essentially to ensure the continuity and progress of the Council's work and to advise the Council. Under Article 25(1) CRP the Secretary-General, acting on instructions from the Presidency, may represent the Council before European Parliament committees.

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<sup>(1)</sup> Decision 80/918/EEC, Euratom, ECSC of 26 September 1980, OJ No L 261, 4.10.1980, p. 16.

The CRP also mentions the Secretary-General on a number of occasions either as the the depositary of information or documents (names and functions of officials accompanying members of the Council and of the Commission (Article 4(3) CRP) or international conventions (Article 24 CRP), or as the forwarder of documents (for publication in the Official Journal (Article 15 CRP) or for notification to the Member States and the Commission (Article 18 CRP), or as the signatory, beside the President, of the minutes of Council meetings (Article 9(1) CRP)).

Finally, the Secretary-General is responsible for submitting to the Council every year the draft estimates of the Council's expenditure and, in accordance with the Financial Regulation of the European Communities, he administers the funds placed at the Council's disposal (Article 21(3) and (4) CRP).

It emerges from Article 151(2) TEC and Article 21(1) CRP that the **General Secretariat's** main task is to assist the Council and its preparatory bodies in all their activities, including those provided for by Titles V and VI of the TEU (CFSP and JHA) (single General Secretariat). The General Secretariat is at the service of the Council, which decides on its organization. It is independent and impartial with regard to both the members of the Council and its Presidency.

The General Secretariat is both the Council's "registrar" (by the drafting of records, material organization and planning of meetings, production, translation and circulation of documents and their archiving) and its adviser. The Secretariat also assists the Presidency of the Council in its work.

The various aspects mentioned above concerning the role of the Secretary-General (Decision of 4 October 1980) as necessary for the proper functioning of the Council also apply to the role of the General Secretariat. The penultimate recital of the above Decision, moreover, mentions the General Secretariat.

The General Secretariat, which employs approximately 2 500 officials and other staff who are nationals of EU Member States, is divided into ten Directorates-General (A to J) in addition to the Secretary-General's private office and the Council Legal Service. The latter has the right and the duty to intervene when it considers it necessary, orally or in writing, both at the level of working



parties and committees and at the level of Coreper or the Council. It also represents the Council before the Court of Justice and the Court of First Instance <sup>(1)</sup>.

On 30 January 1995, on the basis of Article 21(2) CRP, the Secretary-General adopted Decision 24/95 on measures for the protection of classified information applicable to the General Secretariat of the Council. The aim of the Decision is to introduce rules and procedures to guarantee the protection and security of certain documents handled or prepared within the Directorates-General of the Secretariat and the departments concerned. The criterion adopted for classification is not the principle of circulation but that of security. The classification levels are: "SECRET", "CONFIDENTIEL" and "RESTREINT". A definition of each level is given in the Decision. "LIMITE" has become the most common classification.

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<sup>(1)</sup> See Council Decision of 12 June 1989 delegating the power to appoint agents to represent the Council before the Court of Justice.

## Chapter V – Other provisions

### 1. Security (Article 23 CRP)

Article 23 CRP provides that the rules on security shall be adopted by the Council. No use has yet been made of that article. <sup>(1)</sup>

### 2. Depositary of agreements (Article 24 CRP)

As permitted by Article 76 of the Vienna Convention on the Law of Treaties, the Secretary-General of the Council is sometimes designated as the depositary of treaties, conventions or agreements concluded by the Communities: it is in fact the Council, not the Commission, which generally concludes international agreements on behalf of the Communities (see Article 228 TEC).

The duties of a depositary of international agreements are laid down both by general texts (United Nations Charter and subsequent texts and Vienna Convention on the Law of Treaties) and by the texts of specific agreements designating depositaries. The latter are either one of the Member States parties to the agreement concerned or the Secretary-General of an international organization party to the agreement or under the aegis of which the agreement was signed and concluded.

At present, within the Council General Secretariat, the duties of the depositary of agreements are performed mainly by the Agreements Office set up on 15 June 1978, which forms part of the General Coordination Department. Three types of duties are carried out: <sup>(2)</sup>

- that of depositary strictly speaking, i.e. mainly involving the production of the texts of acts to be concluded and certified copies and their forwarding to the parties concerned; the centralization of all information concerning acts which have been signed (ratifications, notifications, acts of accession, etc.) and their forwarding to the parties concerned; and registration of all such information;

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<sup>(1)</sup> For measures to protect classified information, see last paragraph of section 2 of Chapter IV.

<sup>(2)</sup> Some of the depositary's duties are performed by other departments of the General Secretariat.

- duties connected with protocol (in particular at the time of signature);
- printing of the texts.

### **3. Representation of the Council before the European Parliament (Article 25 CRP)**

The first sentence of Article 25(1) CRP provides that the Council may be represented by the Presidency before the European Parliament. The principle is therefore that of representation by the Presidency at the level to be defined by it. The CRP also provide that the Council may be represented by "any other of its members".

However, if the Presidency considers it desirable, it may instruct the Secretary-General or senior officials of the General Secretariat to represent the Council before the European Parliament and its committees. The instructions do not need to be formal; clear and precise statement of the Presidency's intention is sufficient.

The General Secretariat has issued instructions within the Secretariat for implementation of that provision. When representing the Council, an official of the General Secretariat must therefore avoid entering into any commitment whatsoever on behalf of the Presidency or the Council unless he has clear and explicit instructions to that effect.

In order to comply with the CRP, which restrict the possibility of representation to the Secretary-General or senior officials, the Council must in principle be represented by the Secretary-General and/or a Director-General (exceptionally a Director). The Secretary-General himself normally represents the Council. If he is unable to do so, he designates an official for the purpose. If the Presidency requests an official directly, the latter informs the Secretary-General as soon as possible through his immediate superior in order to obtain the Secretary-General's authorization.

Directorate-General F is informed beforehand of any appearance before the European Parliament in order to ensure the best possible coordination and to enable appearance to be prepared.

In the case of temporary Committees of Inquiry set up by the European Parliament under Article 138c TEC <sup>(1)</sup>, the Council may be required to designate an official to appear before the Committee of Inquiry on behalf of the Council (Article 3(3) of the Decision of 6 April 1995). The Council may designate an official of the General Secretariat for that purpose. The latter will speak only as instructed by the Council <sup>(2)</sup>.

#### 4. Correspondence (Article 26 CRP)

Article 26 CRP provides that correspondence to the Council is sent to the President at the address of the Council. Correspondence addressed to the Presidency of the Council must be forwarded to all members of the Council. The above Decision of 12 December 1992 <sup>(3)</sup> provides that the seat of the Council is in Brussels and that Council meetings are held in Luxembourg in April, June and October. Since its removal to the new Justus Lipsius building, the Council's address is:

Council of the European Union  
rue de la Loi, 175  
1048 BRUSSELS (Belgium)

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(1) The detailed provisions for which were laid down by the Decision of the European Parliament, the Council and the Commission of 6 March 1995, OJ No L 78, 6.4.1995, p. 1.  
(2) See for example the designation of an official of the General Secretariat in September 1996 for the temporary Committee of Inquiry into BSE.  
(3) See OJ No C 341, 23.12.1992, p. 1, quoted in Chapter I, section 1.

## II

(Acts whose publication is not obligatory)

## COUNCIL

COUNCIL DECISION  
of 6 December 1993  
adopting the Council's Rules of Procedure

(93/662/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 151 (3) thereof,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 30 (3) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 121 (3) thereof,

HAS DECIDED AS FOLLOWS:

*Sole Article*

The Rules of Procedure of the Council of 24 July 1979, as amended on 20 July 1987, shall be replaced by the following, which shall enter into force on 7 December 1993:

## RULES OF PROCEDURE OF THE COUNCIL

*Article 1*

1. The Council shall meet when convened by its President on his own initiative or at the request of one of its members or of the Commission.

2. The President shall make known the dates which he envisages for meetings of the Council during his period of office as President, seven months before the beginning thereof.

3. In accordance with the Decision taken by common agreement between the Representatives of the Governments of the Member States on 12 December 1992 on the basis of the relevant Articles of the Treaties establishing the European Communities, the Council shall have its seat in Brussels. During the months of April, June and October, the Council shall hold its meetings in Luxembourg.

In exceptional circumstances and for duly substantiated reasons, the Council, acting unanimously, may decide to hold a meeting elsewhere.

*Article 2*

1. The President shall draw up the provisional agenda for each meeting. The agenda shall be sent to the other members of the Council and to the Commission at least 14 days before the beginning of the meeting.

2. The provisional agenda shall contain the items in respect of which a request for inclusion on the agenda, together with any documents relating thereto, has been received by the General Secretariat from a member of the Council or from the Commission at least 16 days before the beginning of that meeting.

The provisional agenda shall also indicate the items on which the Presidency, a member of the Council or the Commission may request a vote.

3. Only items in respect of which the documents have been sent to the members of the Council and to the Commission at the latest by the date on which the provisional agenda is sent may be placed on that agenda.

4. The General Secretariat shall transmit to the members of the Council and to the Commission requests for the inclusion of items in the agenda, documents and indications concerning voting relating thereto in respect of which the time limits specified above were not respected.

5. The agenda shall be adopted by the Council at the beginning of each meeting. The inclusion in the agenda of an item other than those appearing on the provisional agenda shall require unanimity in the Council. Items entered in this way may be put to the vote.

6. The provisional agenda shall be divided into Part A and Part B. Items for which approval of the Council is possible without discussion shall be included in Part A, but this does not exclude the possibility of any member of the Council or of the Commission expressing an opinion at the time of the approval of these items and having statements included in the minutes.

7. However, an "A" item shall be withdrawn from the agenda, unless the Council decides otherwise, if a position on an "A" item might lead to further discussion thereof or if a member of the Council or the Commission so requests.

#### *Article 5*

Subject to the provisions of Article 7 on the delegation of voting rights, a member of the Council who is prevented from attending a meeting may arrange to be represented.

#### *Article 4*

1. Meetings of the Council shall not be public except in the cases referred to in Article 6.

2. The Commission shall be invited to take part in meetings of the Council. The Council may, however, decide to deliberate without the presence of the Commission.

3. The members of the Council and of the Commission may be accompanied by officials who assist them. The number of such officials may be laid down by the Council.

The names and functions of such officials shall be notified in advance to the Secretary-General.

4. Admission to meetings of the Council shall be subject to the production of a pass.

#### *Article 5*

1. Without prejudice to Article 7 (5) and other applicable provisions, the deliberations of the Council shall be covered by the obligation of professional secrecy, except in so far as the Council decides otherwise.

Where the record of a vote in Council is made public in accordance with Article 7 (5), the explanations of vote made when the vote was taken shall also be made public at the request of the Council members concerned, with due regard for these Rules of Procedure, legal certainty and the interests of the Council.

2. The Council may authorize the production of a copy or an extract from its minutes for use in legal proceedings.

#### *Article 6*

1. The Council shall hold policy debates on the six-monthly work programme submitted by the Presidency and, if appropriate, on the Commission's annual work programme. These debates shall be the subject of public retransmission by audiovisual means.

2. The Council may decide unanimously and on a case-by-case basis that some of its other debates are to be the subject retransmission by audiovisual means, in particular where they concern an important issue affecting the interests of the Union or an important new legislative proposal. To that end, it shall be for the Presidency, any member of the Council, or the Commission to propose issues or specific subjects for such a debate.

#### *Article 7*

1. The Council shall vote on the initiative of its President.

The President shall, furthermore, be required to open a voting procedure on the initiative of a member of the Council or of the Commission, provided that a majority of the Council's members so decides.

2. The members of the Council shall vote in the order of the Member States laid down in Article 27 of the Treaty establishing the European Coal and Steel Community (ECSC), Article 146 of the Treaty establishing the European Community (EC) and Article 116 of the Treaty establishing the European Atomic Energy Community (EAEC), beginning with the member who, according to that order, follows the member holding the office of President.

3. Delegation of the right to vote may only be made to another member of the Council.

4. The presence of six members of the Council is required to enable the Council to vote.

5. The record of the votes shall be made public :
- when the Council is acting as legislator within the meaning of the term given in the Annex to these Rules of Procedure, unless the Council decides otherwise. This rule shall apply when the Council adopts a common position pursuant to Article 189b or 189c of the Treaty establishing the European Community,
  - when they are cast by the members of the Council or their representatives on the Conciliation Committee set up by Article 189b of the Treaty establishing the European Community,
  - when the Council acts pursuant to Titles V and VI of the Treaty on European Union by a unanimous Council decision taken at the request of one of its members,
  - in other cases, by Council decision taken at the request of one of its members.

#### Article 8

1. Acts of the Council on an urgent matter may be adopted by a written vote where the Council or the Committee of Permanent Representatives of the Member States (Coreper) referred to in Article 30 of the ECSC Treaty, Article 151 of the EC Treaty and Article 121 of the EAEC Treaty, unanimously decides to use that procedure. In special circumstances, the President may also propose the use of that procedure; in such a case, written votes may be used where all members of the Council agree to that procedure.

2. Furthermore, agreement by the Commission to the use of that procedure shall be required where the written vote is on a matter which the Commission has brought before the Council.

3. A summary of acts adopted by the written procedure shall be drawn up every month.

4. On the initiative of the Presidency, the Council may also act for the purpose of implementing the common foreign and security policy by means of the simplified written procedure (Coreu). In that case the proposal shall be deemed to be adopted at the end of the period laid down by the Presidency depending on the urgency of the matter, except where a member of the Council objects.

5. The General Secretariat shall establish that the written procedures have been completed.

#### Article 9

1. Minutes of each meeting shall be drawn up and, when approved, shall be signed by the President-in-Office at the time of such approval and by the Secretary-General.

The minutes shall as a general rule indicate in respect of each item on the agenda :

- the documents submitted to the Council,
- the decisions taken or the conclusions reached by the Council,
- the statements made by the Council and those whose entry has been requested by a member of the Council or the Commission.

2. The draft minutes shall be drawn up by the General Secretariat within 15 days and submitted to the Council for approval.

3. Prior to such approval any member of the Council, or the Commission, may request that more details be inserted in the minutes regarding any item on the agenda.

4. The texts referred to in Article 11 shall be annexed to the minutes.

#### Article 10

1. Except as otherwise decided unanimously by the Council on grounds of urgency, the Council shall deliberate and take decisions only on the basis of documents and drafts drawn up in the languages specified in the rules in force governing languages.

2. Any member of the Council may oppose discussion if the texts of any proposed amendments are not drawn up in such of the languages referred to in paragraph 1 as he may specify.

#### Article 11

The text of the acts adopted by the Council and that of the acts adopted jointly by the European Parliament and the Council shall be signed by the President-in-Office at the time of their adoption and by the Secretary-General. The Secretary-General may delegate his signature to Directors-General of the General Secretariat.

#### Article 12

Regulations adopted jointly by the European Parliament and the Council as well as Council regulations shall include in their title the word "Regulation", as followed by a serial number, by the date of their adoption and by an indication of their subject matter.

#### Article 13

Regulations adopted jointly by the European Parliament and the Council as well as Council regulations shall contain the following :

- (a) "The European Parliament and the Council of the European Union" or "The Council of the European Union" as appropriate;

- (b) a reference to the provisions under which the Regulation is adopted, preceded by the words "Having regard to";
- (c) a citation containing a reference to proposals submitted and opinions obtained and to consultations held;
- (d) a statement of the reasons on which the Regulation is based, introduced by the word "Whereas";
- (e) the phrase "have adopted this Regulation" or the phrase "has adopted this Regulation", as appropriate, followed by the body of the Regulation.

#### Article 14

1. Regulations shall be divided into Articles, if appropriate grouped into chapters and sections.
2. The last Article of a Regulation shall fix the date of entry into force, where that date is before or after the 20th day following publication.
3. The last Article of a Regulation shall be followed by:
  - "This Regulation shall be binding in its entirety and directly applicable in all Member States,"
  - "Done at ...", followed by the date on which the Regulation was adopted, and
  - in the case of:
    - (a) a Regulation adopted jointly by the European Parliament and the Council, the formula:
 

"For the European Parliament The President"	"For the Council The President",
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 followed by the name of the President of the European Parliament and of the President-in-Office of the Council when the Regulation is adopted;
    - (b) a Council Regulation, the following formula:

"For the Council  
The President",

followed by the name of the President-in-Office of the Council at the time when the Regulation is adopted.

#### Article 15

The acts referred to in Article 191 (1) of the EC Treaty and the acts of the Council referred to in Article 191 (2) thereof and in the first paragraph of Article 163 of the EAEC Treaty shall be published in the Official Journal by the Secretary-General. Common positions adopted by the Council in accordance with the procedures referred to in Articles 189b and 189c of the EC Treaty, and the

reasons underlying those common positions, shall be published under the same conditions.

#### Article 16

Directives and decisions adopted jointly by the European Parliament and the Council, and directives and decisions of the Council, shall include in their titles the word "Directive" or "Decision".

Recommendations made and opinions delivered by the Council shall include in their titles the word 'recommendation' or 'opinion'.

The provisions relating to Regulations set out in Articles 13 and 14 shall apply *mutatis mutandis*, subject to the relevant provisions of the Treaty, to directives and decisions.

#### Article 17

1. Common positions within the meaning of Article J.2 and joint action within the meaning of Article J.3 of the Treaty on European Union shall bear one of the following headings, as appropriate:
  - "Common position defined by the Council on the basis of Article J.2 of the Treaty on European Union";
  - "Joint action adopted by the Council on the basis of Article J.3 of the Treaty on European Union".
2. Joint positions, joint action and conventions within the meaning of Article K.3 (2) of the Treaty on European Union shall bear one of the following headings, as appropriate:
  - "Joint position defined by the Council on the basis of Article K.3 of the Treaty on European Union";
  - "Joint action adopted by the Council on the basis of Article K.3 of the Treaty on European Union";
  - "Convention drawn up on the basis of Article K.3 of the Treaty on European Union".

#### Article 18

1. The Secretary-General shall notify Council directives other than those referred to in Article 191 (2) of the EC Treaty and Council decisions and recommendations to their addressees. He shall also notify the joint action adopted or the common positions or joint positions defined on the basis of Articles J.2, J.3 or K.3 of the Treaty on European Union. He may entrust to Directors-General of the General Secretariat the task of attending to such notification on his behalf.

2. The Secretary-General or a Director-General acting on his behalf shall send authentic copies of Council Directives other than those referred to in Article 191 (2) of the EC Treaty and Council decisions and recommendations to the Governments of the Member States and to the Commission.



3. The decision to publish in the Official Journal the common positions and joint positions defined and the joint action adopted on the basis of Articles J.2, J.3 and K.3 of the Treaty on European Union and the measures implementing joint action and any measures implementing the conventions referred to in paragraph 4 shall in each case be taken by the Council acting unanimously when the said instruments are adopted.

4. Conventions drawn up by the Council in accordance with Article K.3 (2) of the Treaty on European Union, shall be published in the Official Journal.

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

5. The Council shall decide unanimously whether the following should be published in the Official Journal by the Secretary-General:

— directives other than those referred to in Article 191 (1) and (2) of the EC Treaty, Council decisions and recommendations,

— conventions signed between the Member States.

6. Where an agreement concluded between the Communities and one or more States or international organizations sets up a body vested with powers of decision, the Council shall decide, when such an agreement is concluded, whether decisions to be taken by that body should be published in the Official Journal.

#### Article 19<sup>(1)</sup>

1. The Permanent Representatives Committee (Coreper) shall prepare the work of the Council and shall carry out the tasks assigned to it by the Council. All items on the agenda for a Council meeting shall be examined in advance by Coreper unless Coreper decides otherwise. Coreper shall endeavour to reach agreement at its level to be submitted to the Council for adoption. It shall ensure adequate presentation of the dossiers to the Council. In the event of an emergency, the Council, acting unanimously, may decide to settle the matter without prior examination.

2. Committees or working parties may be set up, or with the approval of, Coreper with a view to carrying out certain preparatory work or studies defined in advance.

3. Coreper shall be presided over, depending on the items on the agenda, by the Permanent Representative or the Deputy Permanent Representative of the Member State which holds the Presidency of the Council. Unless the Council decides otherwise, the various committees provided for in the Treaties shall also be presided over by a delegate of that Member State. The same shall apply to the committees and working parties referred to in paragraph 2, unless Coreper decides otherwise. For the preparation of meetings of Council compositions meeting once every six months and held during the first half of this period, the meetings of committees other than Coreper, and those of working parties held during the preceding six months may be chaired by a delegate of the Member State whose turn it is to chair the said Council meetings.

#### Article 20<sup>(1)</sup>

Notwithstanding the other provisions of these Rules of Procedure, the Presidency shall organize the meetings of the various committees and working parties so that their reports are available before the Coreper meetings at which they are to be examined.

#### Article 21

1. The Council shall be assisted by a General Secretariat under the direction of a Secretary-General. The Secretary-General shall be appointed by the Council acting unanimously.

2. The Council shall determine the organization of the General Secretariat.

Under its authority the Secretary-General shall take all the measures necessary to ensure the smooth running of the General Secretariat.

3. The Secretary-General shall submit to the Council the draft estimate of the expenditure of the Council in sufficient time to ensure that the time limits laid down by the financial provisions are met.

4. In accordance with the provisions of the Financial Regulation referred to in Article 78h of the ECSC Treaty, in Article 209 of the EC Treaty and in Article 183 of the EAEC Treaty, the Secretary-General shall administer the funds placed at the disposal of the Council.

#### Article 22

The detailed arrangements for public access to Council documents disclosure of which is without serious or prejudicial consequences shall be adopted by the Council.

<sup>(1)</sup> These provisions are without prejudice to the role of the Monetary Committee as resulting from Article 109c of the EC Treaty and existing Council decisions relating to it.

*Article 23*

The rules on security shall be adopted by the Council.

*Article 24*

In the event of the Secretary-General of the Council being designated as depositary of an agreement concluded between the Community and one or more States or international organizations, of a convention concluded between Member States or of a convention drawn up pursuant to Article K.3 of the Treaty on European Union, the acts of ratification, acceptance or approval of those agreements or conventions shall be deposited at the address of the Council.

In such instances the Secretary-General shall perform all the duties of a depositary of a treaty and shall also ensure that the dates of entry into force of such agreements or conventions are published in the Official Journal.

*Article 25*

1. Subject to special procedures, the Council may be represented by the Presidency or by any other of its

members before the European Parliament or its committees. The Council may also be represented before those committees by its Secretary-General or by senior officials of the General Secretariat acting on instructions from the Presidency.

2. The Council may also present its views to the European Parliament by means of a written statement.

*Article 26*

Correspondence to the Council shall be sent to the President at the address of the Council.

Done at Brussels, 6 December 1993.

*For the Council*

*The President*

W. CLAES

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*ANNEX*

The Council acts as legislator within the meaning of the first indent of Article 7 (5) when it adopts rules which are legally binding in or for the Member States whether by means of regulations, directives or decisions, on the basis of the relevant provisions of the Treaties, in particular on the basis of Article 43 of the Treaty establishing the European Community or in the framework of the procedures in Article 189b and Article 189c of that Treaty, with the exception of discussions leading to the adoption of internal measures, administrative or budgetary acts, acts concerning inter-institutional or international relations or non-binding acts such as conclusions, recommendations or resolutions. Votes shall not be made public in the case of discussions leading to indicative votes or the adoption of preparatory acts.

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**Statements for the Council minutes****(a) *Re Article 2 (1) and (2)***

'The President will endeavour to ensure that, in principle, the provisional agenda for each Council meeting devoted to implementation of the provisions of Title VI of the Treaty on European Union, and the documentation relating to the items on that agenda, are received by the members of the Council at least 21 days before the beginning of the meeting'.

**(b) *Re Article 2***

'The Council is aware that common foreign and security policy matters must be dealt with quickly and effectively; taking into account existing practice, which the Council undertakes to continue to follow, the rules under Article 2 do not prevent that requirement being met'.

**(c) *Re Article 6 (1)***

'Policy debates on the six-monthly work programme submitted by the Presidency and, if appropriate, on the Commission's work programme will be held in the General Affairs Council and the Economic and Financial Affairs Council. It is for the Presidency to set the timetable'.

**(d) *Re Article 6 (2)***

'It is for Coreper to prepare any debates which might be the subject of public retransmission'.

**(e) *Re Article 8***

'The Council agrees to consider the desirability of introducing into the Rules of Procedure provision for the use of a simplified written procedure where the Council acts under Title VI of the Treaty on European Union'.

**(f) *Re Articles 13 and 16***

'The Council notes the undertaking given by the Commission in the Presidency conclusions of the Edinburgh European Council to justify in a recital in each of its proposals the relevance of the proposal with regard to the principle of subsidiarity'.

**(g) *Re Article 15***

'The reasons underlying common positions will be submitted to Coreper and the Council before being published'.

**(h) *Re Article 20***

'Working party reports and other documents serving as a basis for Coreper's proceedings should be sent to the Member States in time for them to be examined'.

CORRIGENDA

Corrigendum to Council Directive 93/89/EEC of 25 October 1993 on the application by Member States of taxes on certain vehicles used for the carriage of goods by road and tolls and charges for the use of certain infrastructures .....

(Official Journal of the European Communities No L 279 of 12 November 1993)

Does not apply to English text.

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Corrigendum to Council Decision 93/662/EC of 6 December 1993 adopting the Council's Rules of Procedure

(Official Journal of the European Communities No L 304 of 10 December 1993)

Page 3, Article 9 (4):

for: "4. The texts referred to in Article 10 shall be annexed to the minutes".

read: "4. The texts referred to in Article 11 shall be annexed to the minutes".

Article 12, third line:

for: "... include in their title the word "Regulation", as followed by ..."

read: "... include in their title the word "Regulation", followed by ..."

II

*(Acts whose publication is not obligatory)*

COUNCIL

COUNCIL DECISION

of 6 February 1995

amending the Council Decision of 6 December 1993 adopting the Council's Rules of Procedure, following the accession of Austria, Finland and Sweden

(95/24/EC, Euratom, ECSC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 151 (3) thereof,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 30 (3) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 121 (3) thereof,

HAS DECIDED AS FOLLOWS:

*Sole Article*

In Article 7 (4) of the Council's Rules of Procedure, the word 'six' shall be replaced by 'eight'.

Done at Brussels, 6 February 1995.

*For the Council*

*The President*

A. JUPPÉ

**Draft code of conduct for  
the implementation of Articles 5(1) and 7(5)  
of the Rules of Procedure**

**I. Scope of Article 7(5) of the Rules of Procedure**

1. The cases in which the Council acts as legislator within the meaning of Article 7(5) are defined in the Annex to the Rules of Procedure. In doubtful cases, the Council will take a decision on the basis of an opinion from the Legal Service.
2. Where the Presidency confines itself to noting that the majority necessary for the adoption of a legal act exists without opposition, it shall ask the Council whether it is desirable to make the votes public.
3. The procedure for making the votes public shall apply to the written procedure only when the Council is acting as legislator within the meaning of Article 7(5).

**II. Decision to make votes public**

1. When the Council is not acting as legislator, a decision to make the record of a vote public is taken at the request of a member of the Council.
2. At the start of a Council meeting a member may make a request covering all the votes taken during that meeting.
3. Even in such cases, the decision whether to make votes public will be taken on a case-by-case basis after each vote has actually been taken.

4. Without prejudice to the right of a Council member to request that a vote be made public during a Council meeting, requests for votes to be made public are examined by Coreper. This rule must be followed in any event in the case of "A" items, for which the usual note forwarded by Coreper to the Council will identify the position of each delegation, both in the case where the Council is acting as legislator within the meaning of Article 7(5) and in other cases, where Coreper has deemed that these votes should be made public.

### **III. Making explanations of vote public**

1. A request to make an explanation of vote public is made under the same conditions as a request to make a vote public and will be dealt with in the same way in Coreper.
2. Such a request must be accompanied by the text of the explanation of vote, which will be brought to the attention of the Council members.
3. When examining the request, each Council member can decide whether to ask for his own explanation of vote also to be made public.
4. In the event of a request to make explanations of vote public, the Council will consider whether they are compatible with the Rules of Procedure, with legal certainty and with the interests of the Council. When they are not compatible, the Presidency shall draw the attention of the Member State concerned to this incompatibility and, where appropriate, request the Council not to make the votes public.



## COUNCIL DECISION

of 20 December 1993

on public access to Council documents

(93/731/EC)

THE COUNCIL,

*Article 2*

Having regard to the Treaty establishing the European Community, and in particular Article 151 (3) thereof,

Having regard to its Rules of Procedure, and in particular Article 22 thereof,

Whereas on 6 December 1993 the Council and the Commission approved a code of conduct concerning public access to Council and Commission documents, reaching common agreement on the principles which must govern such access;

Whereas provisions should be adopted for the implementation of those principles by the Council;

Whereas these provisions are applicable to any document held by the Council, whatever its medium, excluding documents written by a person, body or institution outside the Council;

Whereas the principle of allowing the public wide access to Council documents, as part of greater transparency in the Council's work, must however be subject to exceptions, particularly as regards protection of the public interest, the individual and privacy;

Whereas, in the interests of rationalization and efficiency, the Secretary-General of the Council should sign on behalf of the Council and on its authorization replies to applications for access to documents, except in cases where the Council is called upon to reply to a confirmatory application;

Whereas this Decision must apply with due regard for provisions governing the protection of classified information,

HAS DECIDED AS FOLLOWS:

*Article 1*

1. The public shall have access to Council documents under the conditions laid down in this Decision.

2. 'Council document' means any written text, whatever its medium, containing existing data and held by the Council, subject to Article 2 (2).

1. An application for access to a Council document shall be sent in writing to the Council<sup>(1)</sup>. It must be made in a sufficiently precise manner and must contain information enabling the document or documents requested to be identified. Where necessary, the applicant shall be asked for further details.

2. Where the requested document was written by a natural or legal person, a Member State, another Community institution or body, or any other national or international body, the application must not be sent to the Council, but direct to the author.

*Article 3*

1. The applicant shall have access to a Council document either by consulting it on the spot or by having a copy sent at his own expense. The fee shall be set by the Secretary-General.

2. The relevant departments of the General Secretariat shall endeavour to find a fair solution to deal with repeat applications and/or those which relate to very large documents.

3. Anyone given access to a Council document may not reproduce or circulate the document for commercial purposes through direct sale without prior authorization from the Secretary-General.

*Article 4*

1. Access to a Council document shall not be granted where its disclosure could undermine:

- the protection of the public interest (public security, international relations, monetary stability, court proceedings, inspections and investigations),
- the protection of the individual and of privacy,
- the protection of commercial and industrial secrecy,
- the protection of the Community's financial interests.

<sup>(1)</sup> The Secretary-General of the Council of the European Union, 170 rue de la Loi, 1048 Brussels, Belgium.

— the protection of confidentiality as requested by the natural or legal person who supplied any of the information contained in the document or as required by the legislation of the Member State which supplied any of that information.

2. Access to a Council document may be refused in order to protect the confidentiality of the Council's proceedings.

#### *Article 5*

The Secretary-General shall reply on behalf of the Council to applications for access to Council documents, except in the cases referred to in Article 7 (3), in which the reply shall come from the Council.

#### *Article 6*

Any application for access to a Council document shall be examined by the relevant departments of the General Secretariat, which shall suggest what action is to be taken on it.

#### *Article 7*

1. The applicant shall be informed in writing within a month by the relevant departments of the General Secretariat either that his application has been approved or that the intention is to reject it. In the latter case, the applicant shall also be informed of the reasons for this intention and that he has one month to make a confirmatory application for that position to be reconsidered, failing which he will be deemed to have withdrawn his original application.

2. Failure to reply to an application within a month of submission shall be equivalent to a refusal, except where the applicant makes a confirmatory application, as referred to above, within the following month.

3. Any decision to reject a confirmatory application, which shall be taken within a month of submission of such application, shall state the grounds on which it is based. The applicant shall be notified of the decision in writing as soon as possible and at the same time informed of the content of Articles 138e and 173 of the Treaty establishing the European Community, relating respectively to the conditions for referral to the Ombudsman by natural persons and review by the Court of Justice of the legality of Council acts.

4. Failure to reply within a month of submission of the confirmatory application shall be equivalent to a refusal.

#### *Article 8*

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

#### *Article 9*

This Decision shall be reviewed after two years of operation. In 1996 the Secretary-General shall submit a report on the implementation of this Decision in 1994 and 1995, in preparation for that review.

#### *Article 10*

This Decision shall take effect on 1 January 1994.

Done at Brussels, 20 December 1993.

*For the Council*  
*The President*  
W. CLAES

**II***(Acts whose publication is not obligatory)***COUNCIL****CODE OF CONDUCT CONCERNING PUBLIC ACCESS TO COUNCIL AND  
COMMISSION DOCUMENTS**

(93/730/EC)

THE COUNCIL AND THE COMMISSION,

HAVING REGARD to the declaration on the right of access to information annexed to the final act of the Treaty on European Union, which emphasizes that transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration,

HAVING REGARD to the conclusions wherein the European Councils in Birmingham and Edinburgh agreed on a number of principles to promote a Community closer to its citizens,

HAVING REGARD to the conclusions of the European Council in Copenhagen, reaffirming the principle of giving citizens the greatest possible access to information and calling on the Council and the Commission to adopt at an early date the necessary measures for putting this principle into practice,

CONSIDERING it desirable to establish by common agreement the principles which will govern access to Commission and Council documents, it being understood that it is for each of them to implement these principles by means of specific regulations,

WHEREAS the said principles are without prejudice to the relevant provisions on access to files directly concerning persons with a specific interest in them;

WHEREAS these principles will have to be implemented in full compliance with the provisions concerning classified information;

WHEREAS this code of conduct is an additional element in their information and communication policy,

HAVE AGREED AS FOLLOWS:

**General principle**

The public will have the widest possible access to documents held by the Commission and the Council.

'Document' means any written text, whatever its medium, which contains existing data and is held by the Council or the Commission.

**Processing of initial applications**

An application for access to a document will have to be made in writing, in a sufficiently precise manner; it will

have to contain information that will enable the document or documents concerned to be identified.

Where necessary, the institution concerned will ask the applicant for further details.

Where the document held by an institution was written by a natural or legal person, a Member State, another Community institution or body or any other national or international body, the application must be sent direct to the author.

In consultation with the applicants, the institution concerned will find a fair solution to comply with repeat applications and/or those which relate to very large documents.

The applicant will have access to documents either by consulting them on the spot or by having a copy sent at his own expense; the fee will not exceed a reasonable sum.

The institution concerned will be able to stipulate that a person to whom a document is released will not be allowed to reproduce or circulate the said document for commercial purposes through direct sale without its prior authorization.

Within one month the relevant departments of the institution concerned will inform the applicant either that his application has been approved or that they intend to advise the institution to reject it.

#### Processing of confirmatory applications

Where the relevant departments of the institution concerned intend to advise the institution to reject an application, they will inform the applicant thereof and tell him that he has one month to make a confirmatory application to the institution for that position to be reconsidered, failing which he will be deemed to have withdrawn his original application.

If a confirmatory application is submitted, and if the institution concerned decides to refuse to release the document, that decision, which must be made within a month of submission of the confirmatory application, will be notified in writing to the applicant as soon as possible. The grounds for the decision must be given, and the decision must indicate the means of redress that are available, i.e. judicial proceedings and complaints to the ombudsman under the conditions specified in,

respectively, Articles 173 and 138e of the Treaty establishing the European Community.

#### Exceptions

The institutions will refuse access to any document whose disclosure could undermine:

- the protection of the public interest (public security, international relations, monetary stability, court proceedings, inspections and investigations),
- the protection of the individual and of privacy,
- the protection of commercial and industrial secrecy,
- the protection of the Community's financial interests,
- the protection of confidentiality as requested by the natural or legal persons that supplied the information or as required by the legislation of the Member State that supplied the information.

They may also refuse access in order to protect the institution's interest in the confidentiality of its proceedings.

#### Implementation

The Commission and the Council will severally take steps to implement these principles before 1 January 1994.

#### Review

The Council and the Commission agree that the code of conduct will, after two years of operation, be reviewed on the basis of reports drawn up by the Secretaries-General of the Council and the Commission.

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#### Council statement

This code of conduct and the decisions which the Council and the Commission will severally adopt on the basis thereof are intended to allow public access to Council and Commission documents.

They alter neither the existing practices nor the obligations of Member States' Governments toward their parliaments.

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Further to its decision of 29 May 1995, the Council has adopted the present code of conduct as an addition to the other measures which it has already taken to increase the transparency of its legislative proceedings.

**CODE OF CONDUCT**  
**on public access to the minutes**  
**and statements in the minutes of**  
**THE COUNCIL ACTING AS LEGISLATOR**

This code of conduct concerns items in the Council minutes relating to the final adoption of legislative acts within the meaning assigned to that term in the Annex to the Council's Rules of Procedure and the statements thereon.

**A. Statements**

1. The Council agrees to use statements in the minutes sparingly, it being understood that this instrument must continue to contribute to the efficiency of the decision-making process.
2. To that end, the Council bodies will endeavour, wherever appropriate, to incorporate the content of projected statements in the legislative act itself (recital or enacting terms), or in the statement of reasons in the case of a common position within the meaning of Articles 189b and 189c of the EC Treaty.

Some statements by members of the Council could become explanations of vote as referred to in the second subparagraph of Article 5(1) of the Council's Rules of Procedure.

3. If the Council, the Commission and/or the members of the Council deem it advisable to make statements, those statements should observe the requirement of compatibility with the text of the act.

4. The Council is in favour of public access, in general, to statements which it enters in its minutes when adopting legislative acts. When adopting such acts, the Council will therefore decide, in principle, that these statements are not covered by the obligation of professional secrecy, save in cases where, at the request of one of its members, the Council establishes that it does not have the simple majority required by the first paragraph of Article 5(1) of its Rules of Procedure to waive that obligation.

In the case of a statement by one or more members of the Council, the Council will seek the agreement of the authors of the statement before deciding to make it available to the public.

Where a member of the Council requests that one of his statements be made available to the public by the Council, the Council will endeavour to comply with that request, on the understanding that each member of the Council may make his own statements public, acting on his own responsibility.

## **B. Minutes**

1. When adopting the minutes of its meetings, the Council will systematically examine the question of whether to make public the references to documents before the Council <sup>(1)</sup> and the decisions taken or conclusions reached by the Council which are contained in the minutes relating to the final adoption of its legislative acts. As regards statements in the minutes, the decision taken by the Council when adopting the legislation will determine whether they can be made available to the public, without prejudice to application of the Council Decision of 20 December 1993 on public access to Council documents.
2. The Council's aim in making this examination will be to reach decisions which ensure the widest possible public availability of its minutes, save in exceptional cases where one of the reasons referred to in Article 4(1) of the Council Decision of 20 December 1993 on public access to Council documents does not so permit.

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<sup>(1)</sup> The decision to make minutes public does not mean that the documents referred to therein will be available to the public.

3. Where minutes contain statements by one or more members of the Council, the Council will seek the agreement of the author(s) of the statement(s) before taking a decision.
4. The Council shall take decisions on whether to make its minutes public on the basis of suggestions made by Coreper acting on a report from the Antici Group or the Mertens Group, as appropriate.
5. This Code of Conduct does not apply to items in minutes of Council meetings held prior to the date of its adoption.

## I

*(Information)*

## COUNCIL

## COUNCIL RESOLUTION

of 8 June 1993

on the quality of drafting of Community legislation

(93/C 166/01)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaties establishing the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community,

Having regard to the conclusions of the Presidency of the European Council meeting in Edinburgh on 11 and 12 December 1992 to the effect that practical steps should be taken to make Community legislation clearer and simpler,

Whereas guidelines should be adopted containing criteria against which the quality of drafting of Community legislation would have to be checked;

Whereas although such guidelines would be neither binding nor exhaustive they would aim to make Community legislation as clear, simple, concise and understandable as possible;

Whereas these guidelines are intended to serve as a reference for all bodies involved in the process of drawing up acts for the Council, not only in the Council itself but also in the Permanent Representatives Committee and particularly in the working parties; whereas the Council Legal Service is asked to use these guidelines to formulate drafting suggestions for the attention of the Council and its subsidiary bodies,

HAS ADOPTED THIS RESOLUTION:

The general objective of making Community legislation more accessible should be pursued, not only by making systematic use of consolidation but also by implementing the following guidelines as criteria against which Council texts should be checked as they are drafted:

1. the wording of the act should be clear, simple, concise and unambiguous; unnecessary abbreviations, 'Community jargon' and excessively long sentences should be avoided;
2. imprecise references to other texts should be avoided as should too many cross-references which make the text difficult to understand;
3. the various provisions of the acts should be consistent with each other; the same term should be used throughout to express a given concept;
4. the rights and obligations of those to whom the act is to apply should be clearly defined;
5. the act should be laid out according to the standard structure (chapters, sections, articles, paragraphs);
6. the preamble should justify the enacting provisions in simple terms;
7. provisions without legislative character should be avoided (wishes, political statements);
8. inconsistency with existing legislation should be avoided as should pointless repetition of existing provisions. Any amendment, extension or repeal of an act should be clearly set out;
9. an act amending an earlier act should not contain autonomous substantive provisions but only provisions to be directly incorporated into the act to be amended;
10. the date of entry into force of the act and any transitional provisions which might be necessary should be clearly stated.



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Council of the European Union

**Council Guide — II. Comments on the Council's Rules of Procedure**

Luxembourg: Office for Official Publications of the European Communities

1997 — VIII, 77 pp. — 14.8 x 21 cm

ISBN 92-824-1298-9