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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC, EURATOM) No 1700/2003

of 22 September 2003

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

THE COUNCIL OF THE EUROPEAN UNION,

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

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) Article 255 of the Treaty establishing the European Community gives any citizen of the Union and any natural or legal person residing or having its registered office in a Member State a right of access to European Parliament, Council and Commission documents.

(2) The general principles and the limits governing the public's right of access to documents of the European Parliament, the Council and the Commission were laid down in Regulation (EC) No 1049/2001 of the European Parliament and of the Council [1].

(3) The exceptions to public right of access provided for in Regulation (EC) No 1049/2001 are applicable for a maximum period of 30 years, irrespective of the place where the documents are stored. The exceptions relating to protection of privacy or commercial interests and the specific provisions on sensitive documents may, however, apply beyond that period if necessary.

(4) Council Regulation (EEC, Euratom) No 354/83 [2] provides that the public will not be given access to certain categories of documents 30 years after the documents were created. Pursuant to Article 18(2) of Regulation (EC) No 1049/2001, it is necessary to bring these exceptions into line with the exceptions to right of access provided for in that Regulation.

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

(6) Regulation (EEC, Euratom) No 354/83 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. Article 1(1), (2) and (3) shall be replaced by the following:

'*Article 1*

1. This Regulation seeks to ensure that documents of historical or administrative value are preserved and made available to the public wherever possible.

To that end, each institution of the European Community and of the European Atomic Energy Community, as well as the European Economic and Social Committee, the Committee of Regions, agencies and similar bodies set up by the legislator (hereinafter referred to as the institutions) shall establish its historical archives and open them to the public on the terms provided for by this Regulation after the expiry of a period of 30 years starting from the date of the creation of the document.

[1] OJ L 145, 31.5.2001, p. 43.
[2] OJ L 43, 15.2.1983, p. 1.

2. For the purposes of this Regulation:

(a) "archives of the institutions of the European Communities", means all those documents of whatever type and in whatever medium which have originated in or been received by one of the institutions or by their representatives or servants in the performance of their duties, which relate to the activities of the European Community and/or the European Atomic Energy Community (hereinafter referred to as the European Communities);

(b) "historical archives of the institutions of the European Communities", consist of that part of the archives of the institutions of the European Communities which has been selected, on the terms laid down in Article 7, for permanent preservation.

3. All documents available to the public before expiry of the period provided for in paragraph 1 shall remain available without restriction.';

2. Article 2 shall be replaced by the following:

'*Article 2*

1. In the case of documents covered by the exception relating to privacy and the integrity of the individual, as defined in Article 4(1)(b) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (*) and that relating to the commercial interests of a natural or legal person, including intellectual property, as defined in the first indent of Article 4(2) of Regulation No 1049/2001, the exceptions may continue to apply to all or part of a document after the 30-year period if the relevant conditions for their application are satisfied.

2. Documents covered by the exception relating to privacy and the integrity of the individual, as defined in Article 4(1)(b) of Regulation (EC) No 1049/2001, including files of staff of the European Communities, may be disclosed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (**), and in particular Articles 4 and 5 thereof.

3. Before deciding to make available to the public documents which, if disclosed, could undermine the commercial interests of a natural or legal person, including intellectual property, as defined in the first indent of Article 4(2) of Regulation (EC) No 1049/2001, the institution shall inform the person concerned, in accordance with the rules to be defined by each institution, of its intention to make the documents in question accessible to the public. The documents shall not be released if, taking account of the observations of the person concerned, the institution considers that their disclosure would undermine such commercial interests, unless there is an overriding public interest in disclosure.

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

(*) OJ L 145, 31.5.2001, p. 43.
(**) OJ L 8, 12.1.2002, p. 1.';

3. Article 3 shall be replaced by the following:

'*Article 3*

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

(*) OJ No 17, 6.10.1958, p. 406/58.';

4. Article 4 shall be deleted;

5. Article 5 shall be replaced by the following:

'*Article 5*

For the sake of compliance with the 30-year rule provided for in Article 1(1), each institution shall in good time, and not later than the 25th year following the date of the creation of a document, examine all documents classified in accordance with the rules of the institution concerned in order to decide whether or not to declassify them. Documents not declassified at the first such examination shall be re-examined periodically and at least every five years.';

6. Article 6 shall be replaced by the following:

'*Article 6*

Where, after the expiry of the 30-year period provided for in Article 1(1), a Member State intends to release to the public documents originating from the institutions and covered by Article 2 or Article 3, it shall consult the institution concerned in order to take a decision that does not jeopardise the attainment of the objectives of this Regulation.';

7. Article 7 shall be replaced by the following:

'*Article 7*

Each institution shall transfer to its historical archives all documents contained in their current archives no later than 15 years after their date of creation. According to the criteria laid down by each institution pursuant to Article 9, there shall be an initial sorting process with the purpose of separating documents that are to be preserved from those that have no administrative or historical value.';