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Subject : Eighth annual report of the Council on the implementation of Regulation  
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

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Delegations will find attached the above-mentioned draft report, as it stands after examination by the Working Party on Information at its meetings on 30 March and 16 April 2010.

The Permanent Representatives Committee is accordingly asked to suggest that the Council, at its next meeting, record its agreement to the report set out below.

This brochure contains the Council's annual report on the implementation of Regulation (EC) No 1049/2001 regarding public access to documents in 2009.

The report, adopted by the Council in April 2010, presents the regulatory, administrative and practical adjustments made by the Council to ensure compliance with the provisions of Regulation (EC) No 1049/2001.

It also gives information on the Council's public register of documents as well as statistics on public access to documents.

In addition, the report highlights the key developments in the eighth year of implementation of the Regulation and reviews complaints submitted to the European Ombudsman as well as rulings given by the Community Courts in 2009 under Regulation (EC) No 1049/2001 in cases concerning access to Council documents.

Additional information (and previous reports) on access to Council documents and on other transparency issues can be found on the Internet website <http://www.consilium.europa.eu>, under "Documents".

**DRAFT**

**EIGHTH ANNUAL REPORT OF THE COUNCIL ON THE IMPLEMENTATION  
OF REGULATION 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**

# CONTENTS

|  | <b>Page</b> |
|--|-------------|
| <b>INTRODUCTION</b>  | 5           |
| <b>I. REGULATORY, ADMINISTRATIVE AND PRACTICAL ADAPTATIONS</b>                     | 6           |
| 1. <i>Public register of Council documents</i>                                     | 6           |
| 2. <i>Practical adaptations</i>  | 8           |
| 3. <i>Legislative transparency</i>   | 9           |
| 4. <i>In-house instructions, training sessions, staff</i>                          | 10          |
| <b>II. ANALYSIS OF APPLICATIONS FOR ACCESS</b>                                     | 12          |
| • <b>Occupations and geographical distribution of applicants</b>                   | 12          |
| • <b>Fields covered by applications</b>  | 13          |
| • <b>Number of documents examined and refusals of access</b>                       | 14          |
| <b>III. APPLICATION OF EXCEPTIONS TO THE RIGHT OF ACCESS</b>                       | 15          |
| • <b>Grounds for refusal</b>   | 15          |
| <b>IV. KEY DEVELOPMENTS</b>  | 17          |
| 1. <i>Proposal for a recast of Regulation (EC) No 1049/2001</i>                    | 17          |
| 2. <i>Entry into force of the Lisbon Treaty</i>                                    | 18          |
| 3. <i>Interinstitutional Committee on Access to Documents</i>                      | 19          |
| <b>V. COMPLAINTS LODGED WITH THE EUROPEAN OMBUDSMAN AND<br/>LEGAL ACTION TAKEN</b> | 20          |
| A. <b>COMPLAINT LODGED WITH THE EUROPEAN OMBUDSMAN</b>                             | 20          |
| B. <b>LEGAL ACTION</b>   | 24          |
| <b>VI. FINAL REMARKS</b>   | 27          |
| <b>ANNEX: STATISTICS ON PUBLIC ACCESS TO COUNCIL DOCUMENTS</b>                     | 29          |

## INTRODUCTION

Article 17(1) 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 provides that "*Each institution shall publish annually a report for the preceding year including the number of cases in which the institution refused to grant access to documents, the reasons for such refusals and the number of sensitive documents not recorded in the register*"<sup>1</sup>.

This report covers the Council's implementation of Regulation (EC) No 1049/2001 in 2009.

As in the earlier annual reports<sup>2</sup>, Part I of this report sets out the regulatory, administrative and practical adaptations made by the Council in 2009 in order to ensure compliance with the provisions of Regulation (EC) No 1049/2001. Part II analyses the statistics for applications for access during the reference period. Part III relates more specifically to the Council's application of exceptions to the right of access under Article 4 of Regulation (EC) No 1049/2001. Part IV lists the key events of the eighth year of implementation of the Regulation, and Part V deals with complaints made to the European Ombudsman and with legal actions. A final section, Part VI, presents the report's conclusions.

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<sup>1</sup> See earlier reports by the Council (7957/03, 8036/04, 8896/05, 13354/1/06 REV 1, 8184/07, 8475/08 and 8503/09) and the Commission (COM(2003) 216 final, COM(2004) 347 final, COM(2005) 348 final, COM(2007) 548 final, COM(2007) 841 final, COM(2008) 630 final and COM(2009) 331 final) and For the European Parliament's reports on the years 2002-2007, see the Notes from the Secretary-General of the European Parliament to the Bureau dated 23 January 2003 (PE 324.992/BUR), 19 February 2004 (PE 338.930/BUR/NT), 7 March 2005 (PE 352.676/BUR./ANN.), 22 March 2006 (PE 371.089/BUR./ANN.), 23 April 2007 (PE 388.097/BUR) 18 April 2008 (PE 402.460/BUR/ANN) and 9 June 2009 (PE 421.924/BUR/ANN). Moreover, in accordance with Article 17(2) of Regulation (EC) No 1049/2001, the Commission published a report on the implementation of the principles of the Regulation on 30 January 2004 (COM(2004) 45 final).

<sup>2</sup> See documents 7957/03, 8036/04, 8896/05, 13354/1/06 REV 1, 8184/07, 8475/08 and 8503/09.

## I. REGULATORY, ADMINISTRATIVE AND PRACTICAL ADAPTATIONS

### 1. *Public register of Council documents*

Under Article 11 of Regulation (EC) No 1049/2001, the Community institutions are required to make a document register available in electronic form. The public register of Council documents, which has been operational since 1 January 1999, contains references to the Council documents entered in it via an automatic archiving system. Accordingly, all non-sensitive documents submitted to the Council or to one of its preparatory bodies which are to serve as a basis for deliberations, could influence the decision-making process or reflect the progress made on a given subject are automatically listed in the register. In the case of sensitive documents<sup>3</sup>, the author specifies the references which may be permitted to appear in the register<sup>4</sup>.

The register allows access to the full text of a large number of documents which, pursuant to Article 11 of Annex II to the Council's Rules of Procedure, must be made directly available to the public as soon as they have been circulated<sup>5</sup>. These are documents in the following categories:

- provisional agendas for Council meetings and for its preparatory bodies (with the exception of certain bodies dealing with military and security questions);
- documents submitted to the Council which are listed under an item on its agenda marked with the words "*public deliberation*" or "*public debate*" in accordance with Article 8 of the Rules of Procedure<sup>6</sup>;
- in the legislative field, "I/A" and "A" item notes submitted to Coreper and/or the Council, as well as draft legislative acts, draft common positions and joint texts approved by the Conciliation Committee to which they refer;

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<sup>3</sup> For the purposes of Regulation (EC) No 1049/2001, "sensitive documents" means documents classified as "CONFIDENTIEL", "SECRET" or "TRÈS SECRET/TOP SECRET". On this subject, see Article 9(1) of that Regulation.

<sup>4</sup> See Article 9(2) and Article 11(2) of Regulation (EC) No 1049/2001.

<sup>5</sup> In 2009, 122 160 documents were made available to the public via the register as soon as they had been circulated.

<sup>6</sup> See Article 11(5)(b) of Annex II to the Council's Rules of Procedure, OJ L 325, 11.12.2009, pp. 53-54. For additional information on this issue, see also point I.3 of this report, pp. 8-9.

- documents regarding a legislative act after a common position has been adopted, a joint text has been approved by the Conciliation Committee or a legislative act has been finally adopted;
- any other text adopted by the Council which is intended for publication in the Official Journal;
- documents originating from a third party which have been made public by the author or with his agreement;
- documents which have been made available in full to a member of the public who made an application.

As of 31 December 2009, the register listed 1 371 608 documents (all languages taken together), of which 1 039 973 (75,8 % of those registered) were public, i.e. either available in downloadable format (1 017 286 documents in PDF or HTML format) or on request (22 687 documents in other formats). This represented an increase of 14,7 % on the number of documents appearing in the register in 2008 (1 371 608 at the end of 2009 against 1 195 509 at the end of December 2008) and an increase of 21,4 % in the number of documents directly accessible via the register (1 039 973 by the end of 2009 against 856 261 at the end of 2008).

Moreover, as of 31 December 2009 the register contained 22 686 documents bearing the code "P/A" (i.e. partially accessible), including 3 891 which were accessible on-line (in PDF format)<sup>7</sup>. "P/A" documents registered before 1 February 2004 (from when all new documents classified as partially accessible have been directly available to the public via the register) are not usually downloadable but may be made available on request.

In 2009, 554 952 different users logged on to the Council's public document register. The total number of visits in 2009 was 1 176 017, while consultations (in terms of number of screens viewed) totalled 10 011 440.

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<sup>7</sup> Partial disclosure is practised in conformity with Article 4(6) of the Regulation.

2 549 (original language) sensitive documents were produced in the period concerned, 20 classified as "SECRET UE" and 425 as "CONFIDENTIEL UE". Of these, 1 "SECRET UE" document and 156 "CONFIDENTIEL UE" documents are mentioned in the register, in accordance with Article 9(2) and Article 11(2) of Regulation (EC) No 1049/2001.

## 2. *Practical adaptations*

Under Regulation (EC) No 1049/2001, all applications for access to documents held by the Council concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility must be given consideration, including applications relating to classified documents.

The processing of applications for access to classified documents requires thorough investigation by the relevant departments of the General Secretariat of the Council. In 2009 the Transparency Department examined a total of 825 classified documents including 34 classified as "CONFIDENTIEL UE" and 791 classified as "RESTREINT UE" <sup>8</sup>.

In order to conduct their examination, Transparency Department officials systematically consult the authors/departments concerned.

In 2009, the General Secretariat of the Council had recourse to the possibility of extending the time-limit for examining initial applications in 20,1% of the cases, which is less than the previous year (22 % in 2008). Processing time averaged 14 working days in 2009 (against 16 days in 2008). For confirmatory applications, which are examined by the Working Party on Information before referral to Coreper and the Council for adoption, the average time was 26 working days in 2009 against 25 working days in 2008 <sup>9</sup>.

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<sup>8</sup> The documents in question concerned notably the areas of CFSP (31,4 %), ESDP (28,4 %) and Justice and Home Affairs (27 %).

<sup>9</sup> The time-limit for replying laid down in Regulation (EC) No 1049/2001 is 15 working days, with a possible extension of a further 15 working days in duly justified cases, e.g. where the application concerns a very large number of documents.



As provided for in Article 4(6) of Regulation (EC) No 1049/2001, the Council routinely considers disclosing parts of requested documents. This makes for greater openness, particularly in the legislative field.

Where a document is still subject to discussions within the Council or its preparatory bodies, and this document reflects the positions of delegations, the situation may arise that full release of the document can interfere with the proper conduct of the negotiations. In such cases, the Council applies, as a general rule, Article 4(3) of the Regulation by granting access to the content of the preparatory documents while these are still being discussed, removing only the references to names of delegations. Interested parties can thus follow the progress of discussions without the institution's decision-making process being undermined. This practice does not, however, prejudice the possible application of other exceptions provided for in Article 4 of the Regulation.

### 3. *Legislative Transparency*

In addition to the documents which are made accessible via the register following a request for access under Regulation (EC) No 1049/2001, a considerable number of legislative documents are made public each year, pursuant to Article 11(6) of Annex II to the Council's Rules of Procedure<sup>10</sup>. This provision prescribes that, unless one or more of the provisions of Article 4 Regulation (EC) No 1049/2001 are applicable, all preparatory documents relating to a legislative act shall be made available to the public in full after the final adoption of the act<sup>11</sup>.

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<sup>10</sup> It should be recalled in this context that, pursuant to Article 15(3) of the Treaty on the Functioning of the European Union, each institution, body, office or agency shall elaborate, in their respective rules of procedure, specific provisions regarding access to documents. In the case of the Council, these specific provisions are set out in Annex II to the Rules of Procedure.

It moreover follows from Article 12(2) of Regulation (EC) No 1049/2001 that the three institutions directly involved in the legislative process shall provide for greater access to their documents when they are acting in their *legislative capacity*.

<sup>11</sup> Thus, in 2009, more than 1 350 preparatory documents were made available to the public in full following final adoption of the legislative acts to which they relate.

Note in this connection, that the gradual opening of the Council's decision-making process following the adoption, by the European Council, of the overall policy on transparency in June 2006<sup>12</sup> as well as the entry into force of the Lisbon Treaty on 1 December 2009<sup>13</sup>, has contributed to further widening of access to Council documents. This is notably, but not only the case in the legislative field. Thus, Article 11(5) of the Annex II to the Council's Rules of Procedure provides that all documents listed on the Council's agenda for a public deliberation or a public debate shall be made electronically available on the Council's Internet website in the official languages of the European Union<sup>14</sup>.

Parallel to this, the General Secretariat of the Council prepares a monthly summary listing *inter alia* all legislative acts, which have been adopted by the Council during a given month. The summary also includes information on the results of votes, the voting rule applicable as well as statements concerning the legislative acts which have been entered into the minutes of the Council<sup>15</sup>.

#### 4. *In-house instructions, training sessions, staff*

As in previous years, in 2009 the Council Secretariat ran a series of training sessions<sup>16</sup> for Council staff responsible for document production in order to familiarise them with the procedures and practice to be followed as regards public access to documents.

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<sup>12</sup> See the Council's annual reports on access to documents in 2006 (pp. 17-18) and in 2007 (pp. 20-21).

<sup>13</sup> See chapter 4, point 2, of this report.

<sup>14</sup> See, in particular, Article 11(5) of Annex II to the Council's Rules of Procedure, OJ L 325, 11.12.2009, pp. 53-54.

<sup>15</sup> The monthly summary can be consulted on the Council's website <http://www.consilium.europa.eu> under "Documents" - "Legislative Transparency" - "Summary of Council acts". The results of voting in Council deliberations on acts adopted by co-decision may be consulted at the same address under "Documents" - "Legislative Transparency" - "Public votes".

<sup>16</sup> In all, six training sessions were organised during the reference period.

In 2009, following internal re-organisation of the Council Secretariat, a new Directorate for Transparency was set up, within which the Council's Access to documents Service became a branch of a new unit (DG F 2 A) encompassing the areas of Access to Documents (12 officials) and Archives (35 officials).

## II. ANALYSIS OF APPLICATIONS FOR ACCESS

Requests from the public for access to Council documents are processed in the initial phase by the General Secretariat of the Council. In the event of a total or partial refusal of access by the General Secretariat of the Council to a document, the applicant may submit a confirmatory application asking the institution to reconsider its position. In the event of a total or partial refusal of a confirmatory application, the applicant may lodge a complaint with the European Ombudsman or institute proceedings before the General Court of the European Union.

The Annex to this report provides statistics on public access to Council documents for the last five years (2005-2009).

During the reference period the Council received 2 666 requests from the public for access to a total of 8 443 documents. The number of documents disclosed in full or in part (following initial or confirmatory applications) totalled 6 452 in 2009.

As the statistics for Internet consultation of the public register of Council documents demonstrate, the Internet register continues to be an important research tool for citizens wishing to keep close track of the activities of the European Union.

### **Occupations and geographical distribution of applicants**

Initial applications came mainly from students and researchers (33,6 %). Lawyers (11,4 %), industry and commerce and pressure groups (17,2 %) were also high on the list of social and professional categories represented. Since applicants are not required to give their identity or provide reasons for their applications, which are usually sent by e-mail, the occupations of a significant proportion (12,7 %) of them is unknown. Most confirmatory applications also originated from students and researchers (46,9 %). However, numbers from lawyers increased remarkably in 2009 (18,8 % against 10,5 % in 2008).

While 6,2 % of the confirmatory requests for access in 2009 were submitted by journalists, this category of applicants only accounted for 2,8 % of the requests at the initial stage. This is mainly due to the fact that the institutions' public document registers represent only one of several possible sources of information for the press. Moreover, the vast majority of journalists are mainly interested in the latest news. It is therefore not surprising that the few applications for access from journalists came mainly from the field of investigative journalism and were thus similar to applications from academics.

As regards the geographical distribution of applicants, the majority of initial applications came from Belgium (28,2 %), Germany (14,7 %) and the United Kingdom (8,7 %). Applications originating from non-EU countries represented 6,9 % of the total. Confirmatory applications came mainly from Germany (25,8 %), Belgium (22,6 %), Spain and the United Kingdom (both 9,7 %) <sup>17</sup>. The numbers representing confirmatory applications originating from non-EU-countries also showed a significant increase (9,7 % against 0 % in 2008).

The relatively high number of initial and confirmatory applications originating from Belgium is explained by the fact that several multinational companies and international law firms, as well as numerous associations representing various economic and industrial sectors at European level have their headquarters in Brussels.

### **Fields covered by applications**

As regards the fields covered by the applications, the interest in justice and home affairs remained relatively high (15,3 %) <sup>18</sup>. This was followed, in descending order, by applications for documents on external relations and the CFSP (12,2 %), the environment (8,6 %), the health and consumer policy (8,1 %), internal market (7,7 %), taxation (7,6 %) and agriculture and fisheries (7,3 %).

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<sup>17</sup> In 2008, most confirmatory applications came from Belgium (30 %) and Germany (20 %).

<sup>18</sup> This figure increased steadily between 2005 and 2008, from 22,5 % in 2005 to 24,5 % in 2006 and 26,8 % in 2007. In 2008 the figure reached 25,4 %.

Applicants' interest in external relations and the CFSP (12,2 % of applications in 2009 as against 16,2 % in 2008 and 18,1 % in 2007) remained fairly steady, whereas applications concerning the health and consumer policy (8,1 % in 2009 as against 1,9 % in 2008 and 2,1 % in 2007) and internal market (7,7 % in 2009 as against 3,4 % in 2008 and 2,9 % in 2007) increased quite remarkably<sup>19</sup>. It should, however, be noted that while applications relating to "conventional" legislative documents concerning, for example, competitiveness, have been falling fairly steadily in recent years (1,1 % in 2007, 2,6 % in 2008 and 1,9 % in 2009 against 5,3 % in 2004 and 5,8 % in 2005), that is not necessarily indicative of a lack of interest in that field on the part of the public but is rather due to the fact that a considerable number of legislative documents are made accessible through the public register of Council documents as soon as they are circulated. In 2009 a total of 122 160 documents (i.e. 69,4 % of the 176 073 produced and listed in the register during the year) were thus circulated as public documents.

#### **Number of documents examined and refusals of access**

During the reference period, the General Secretariat examined 8 443 documents, 6 452 of which were made available (5 335 in full and 1 117 in part) in the initial stage (reply supplied by the General Secretariat on behalf of the Council). 33 confirmatory applications were made in respect of 351 documents, as a result of which the Council decided to disclose an additional 88 documents (61 in full and 27 in part). Of the 8 794 documents examined during the reference period (initial and confirmatory applications combined), 2 254 were therefore refused, which makes an access rate of 63,9 % (documents requested and fully disclosed) or 77,5 % if documents to which partial access was granted are also taken into account.

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<sup>19</sup> Of the documents disclosed in full following application for access, 19,9 % related to justice and home affairs, 15,6 % to the CFSP, 9,4 % to the environment, 7 % to taxation and 5,6 % to the internal market. Of the total number of documents disclosed (in full or in part), 20,4 % concerned justice and home affairs, 15,4 % the CFSP, 8,9 % the environment, 6 % taxation and 5,8 % the internal market.

### III. APPLICATION OF EXCEPTIONS TO THE RIGHT OF ACCESS

#### Grounds for refusal

With regard to the initial applications, the grounds for refusal most frequently invoked were the protection of the decision-making process, which accounted for nearly half of all refusals (39,2 %), followed by the protection of the public interest as regards international relations (22,7 %), public security (5,6 %), and defence and military matters (3,5 %).

In 28,2 % of cases several grounds for refusal were invoked: protection of the public interest as regards public security was often given as a reason for refusal in conjunction with protection of the public interest as regards international relations (42 %), while the protection of the decision-making process of the institution was regularly mentioned together with the protection of the public interest as regards international relations, including negotiations on trade, enlargement, etc. (9,2 %).

As for the confirmatory applications, protection of the public interest as regards international relations was invoked as grounds for 14,5 % of the refusals in 2009 (77,4 % in 2008), while the protection of the public interest as regards public security was invoked in 7,6 % of cases (16,1 % in 2008). In 77,9 % of cases several grounds for refusal were invoked. Most often it was protection of the public interest as regards public security that was given as a reason for refusal in conjunction with protection of the public interest as regards international relations (97,7 %).

The protection of court proceedings and legal advice (exception provided for in the second indent of Article 4(2) of Regulation (EC) No 1049/2001) was invoked as grounds for total refusal in the initial in 0,4 % of cases in 2009 (against 1,6 % in the initial phase in 2008); at the confirmatory stage, it was never mentioned as a single grounds for a total refusal in 2009, as was the case in 2008 as well.

If only parts of the requested document are covered by any of the exceptions, the remaining parts of the documents are released in conformity with Article 4(6) of the Regulation. The grounds for partial refusal most frequently invoked at the initial phase in 2009 were the protection of the decision-making process, which accounted for nearly half of all partial refusals (40 %), followed by the protection of court proceedings and legal advice (9,8 %), the protection of the public interest as regards international relations (9 %) and public security (5 %). Regarding the confirmatory applications, the grounds for partial refusal most frequently invoked in 2009 were the protection of the public interest as regards public security in conjunction with the protection of the public interest as regards international relations (29,6 %), the protection of the decision-making process (26 %) and the protection of court proceedings and legal advice (18,5%). Furthermore, the protection of court proceedings and legal advice in conjunction with protection of the decision-making process was given as a reason in 18,5 % of the cases in which access to a document was partially refused in the confirmatory phase. <sup>20</sup>

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<sup>20</sup> For technical reasons, the statistics in the Annex to this report do not yet show the different grounds for granting partial access. This will be possible starting from 2010.



## IV. KEY DEVELOPMENTS

### 1. *Proposal for a recast of Regulation (EC) No 1049/2001*

In 2009, the Council and the European Parliament continued their examination of the proposal for a recast of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents <sup>21</sup>.

On 11 March 2009, the European Parliament adopted a total of 92 amendments to the Commission's text, but adjourned its vote on the legislative resolution until its next legislative term and, hence, the formal conclusion of its first reading of the legislative proposal.

Pending further clarification of Parliament's position, the Council's Working Party on Information proceeded, during the second quarter of 2009, to a thorough "article by article" examination of the recast proposal, while taking into account those of Parliament's amendments, adopted in March 2009, which were relating to the modifications envisaged in the recast proposal, as well as comments and suggestions made by delegations <sup>22</sup>.

However, following the European elections in June 2009, substantial work on the recast proposal was not resumed in the European Parliament until February 2010 <sup>23</sup>, and no timeframe has so far been set for the finalisation of Parliament's first reading.

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<sup>21</sup> COM (2008) 229 final. The proposal, which was forwarded by the Commission to the Council and the European Parliament on 7 May 2008, is intended to update certain provisions of Regulation (EC) No 1049/2001 following the entry into force of Regulation (EC) No 1367/2006 (known as the "Århus Regulation") on access to environmental information 1, while at the same time taking into account recent case law on access to documents as established by the CFI and the European Court of Justice. See also Council Annual Report on access to documents in 2008, pp. 15–16.

<sup>22</sup> See document 10859/1/09, pp. 1-3.

<sup>23</sup> See document 6185/10, p. 6.

## 2. *The entry into force of the Lisbon Treaty*

Following the entry into force of the Lisbon Treaty on 1 December 2009, the relevant provisions replacing those of Article 255 of the former EC Treaty are laid down in Article 15(3) of the Treaty on the Functioning of the European Union. The new treaty provisions extend the public right of access to documents of all institutions, bodies and organs of the European Union, although with some restrictions as regards documents held by the Court of Justice, the European Central Bank and the European Investment Bank.

The Commission holds the view that the necessary adaptations of the existing EU legislation to the provisions of Article 15(3) TFEU can be made within the framework of the current review of Regulation 1049/2001<sup>24</sup>.

As regards the public access to the decision-making process of the institutions, it shall be noted that Article 16(8) of the Treaty on the European Union as well as Article 15(2) of the Treaty on the Functioning of the European Union provide that the Council meet in public when it deliberates and acts on a draft legislative act. This principle also contributes to widening access to Council documents since documents relating to items discussed in public Council sessions are automatically made public and available in the official EU languages on the Council's Internet website<sup>25</sup>.

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<sup>24</sup> If, however, the legislative procedure for the adoption of the Commission's recast proposal cannot be concluded within a reasonable time frame, the Commission will consider the possibility to submit a limited proposal amending the current Regulation (EC) No 1049/2001 only with regard to the changes introduced by Article 15(3) of the Treaty on the Functioning of the European Union. See explanatory note from the Commission concerning the alignment of the proposal for a Recast of Regulation (EC) No 1049/2001 with the provisions of Article 15(3) of the Treaty on the Functioning of the European Union (TFEU), set out in document 5461/10.

<sup>25</sup> See Article 7 (2) of the Council's Rules of Procedure as well as Article 11(5) of Annex II to the Council's Rules of Procedure, OJ L 325, 11.12.2009, pp. 53-54.

### 3. *Interinstitutional Committee on Access to Documents*

According to Article 15(2) of Regulation (EC) No 1049/2001 on access to the documents of the European Parliament, the Council and the Commission, the institutions shall establish an interinstitutional committee to examine best practice, address possible conflicts and discuss future developments on public access to documents.

In accordance with its mandate, and at the initiative of the Swedish Presidency, the Committee met at political level on 15 December 2009 in Strasbourg with a view to examining ways and means to further enhance citizens' possibilities to exercise their right of access to documents as laid down in the Treaties and in Regulation 1049/2001 <sup>26</sup>.

At the meeting, the Swedish Minister for EU Affairs, Cecilia Malmström, together with Commission Vice-President Margot Wallström and Vice-President of the European Parliament, Diana Wallis, took stock of the previous work of the Committee and initiatives to further improve transparency and public access, for example the Openness Action Plan, presented by Vice-President Wallström in the European Parliament in January 2009. On this basis, they agreed upon a series of measures aiming at improving the efficiency of the Committee's work and facilitating public access to documents and information held by the EU institutions.

As regards the future work of the Committee, it was suggested that the Committee meet at least once a year at political level. The annual meeting could usefully take place in May, following the adoption of the institutions' annual reports on the implementation of Regulation 1049/2001. Additional meetings could be held whenever necessary.

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<sup>26</sup> In addition to this, the departments of the Council, the Parliament and the Commission responsible for applying Regulation (EC) No 1049/2001 met five times in 2009 to compare and exchange practical experience in applying the Regulation in the light of the recent case-law on public access to documents.

## V. COMPLAINTS LODGED WITH THE EUROPEAN OMBUDSMAN AND LEGAL ACTION TAKEN

### A. COMPLAINTS LODGED WITH THE EUROPEAN OMBUDSMAN

The following section of this report refers to four complaints lodged with the European Ombudsman in complaints relating to the application of Regulation No 1049/2001. Of the four cases pending, one complaint was already mentioned in the Council's annual report on 2008, to which the reader is referred <sup>27</sup>. The three remaining complaints, which were opened in 2009, are summarised below.

In accordance with Article 3(2) of the Statute of the European Ombudsman, several of the documents concerned by the above-mentioned complaints, including a number of classified documents, have been inspected by the Ombudsman services on the premises of the Council Secretariat on 8 December 2009.

#### *Complaint 90/2009/(JD)OV submitted to the Ombudsman on 12 January 2009*

This complaint concerns the Council's decision of 4 December 2008, by which it refused access to documents 12875/08, 13448/08, 13750/08, 13382/08, 13637/08 and 13949/08, pursuant to Article 4, paragraph 1, point a), third indent of Regulation 1049/2001 (protection of the public interest as regards international relations. All the requested documents relate to the negotiations on the Anti-Counterfeiting Trade Agreement (ACTA). Prior to its decision, the Council had looked into the possibility to grant partial access to the documents concerned, pursuant to Article 4, paragraph 6 of the Regulation, but had come to the conclusion that the exception relating to the protection of international relations applied to the content of the documents entirely.

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<sup>27</sup> Complaint 944/2008/OV submitted to the Ombudsman on 2 April 2008 (still pending) is summarised in the Council's annual report on access to documents in 2008, p. 17.

In his complaint, the applicant alleged that the Council's decision not to grant him access to the above-mentioned documents was unjustified because once concluded, the future the Anti-Counterfeiting Trade Agreement (ACTA) will contain new legal framework and will be binding for the Member States and that it thus is "*(partly) de facto legislation*". Against that background, the complainant challenges the Council's refusal to release the documents in question based on the protection of international relations. The complainant moreover contests the Council's decision not to grant partial access to the documents under Article 4(6) of the Regulation.

In its reply to this complaint dated 29 April 2009, the Council pointed out that the requested documents clearly related to the conduct of international negotiations and should not be considered as legislative documents within the terms of the Council' Rules of Procedure. In addition, the Council underlined that all information contained in the documents related to proposals and observations on the positions submitted by the EU and its negotiating partners in the ACTA negotiations, the disclosure of which, due to their sensitive content, would be prejudicial to the protection of the EU's capacity to properly conduct those negotiations. Furthermore, it would be impossible to release only the parts of the documents containing the EU's position, as suggested by the complainant, without also revealing the positions of the EU's negotiating partners.

This case is still pending.

*Complaint 523/2009/TS submitted to the Ombudsman on 28 February 2009*

This complaint concerns the Council's decision to refuse access to document 14483/06. The requested document, which is classified RESTREINT UE, concerns the approval of a reply to a letter of the European Parliament on transmission of information to the Temporary Committee on the alleged use of European Countries by the CIA for the transportation and illegal detention of prisoners.

In his complaint, the applicant disputes the Council's decision insofar as it refused partial access to those parts of the document, which allegedly contained data concerning the CIA rendition programme and other related information. Accordingly, he claims that the relevant parts of the requested document should be released to the public.

In its reply to this complaint dated 28 May 2009, the Council confirmed the position taken in its reply of 19 January 2009 to the complainant's confirmatory request, namely that access to document 14483/06 should be denied pursuant to the third indent of Article 4(1)(a) of the Regulation (protection of international relations). In view of its sensitive content, disclosure of the document would be detrimental to the good functioning of the relations between the EU and the US, in particular, by hindering the diplomatic efforts continuously being made in order to find constructive solutions to issues in areas of the highest political importance. Moreover, partial access to the document had to be refused, since the exception relating to the protection of international relations applied to the document in its entirety.

This case is still pending.

*Complaint 1170/2009/KM submitted to the Ombudsman on 30 April 2009*

This complaint concerns the Council's decision of 24 April 2009 not to grant full access to document 10673/02, which contains an opinion of the Council Legal Service concerning the proposal for a Regulation of the European Parliament and of the Council on genetically modified food and feed.

In his complaint, the applicant alleged that the Council had failed to reply to a confirmatory request for access to document 10673/02 and invokes procedural and substantive errors in the handling of his application under Regulation (EC) No 1049/2001. He moreover submitted that the reasons given by the Council for refusing access to document 10673/02 were contradictory and that the Council had failed to establish the need to protect the legal advice contained in the document concerned.

In its reply to this complaint dated 10 July 2009, the Council dismissed the complainant's allegations of procedural errors as unfounded, and pointed out that its refusal to grant access to the legal advice contained in document 10673/02 was fully in accordance with the interpretation given by the Court of Justice, in its ruling of 1 July 2008, to the second indent of Article 4(2) of Regulation (EC) 1049/2001.

The Council therefore considered that the legal advice given by the Legal Service on this question remained particularly relevant in view of the Council's ongoing and future legislative work, justifying continued protection of the relevant parts under the second indent of Article 4(2) of Regulation 1049/2001. In its reply of 24 April 2009 to the complainant's confirmatory request Council had moreover substantiated the need for protection, giving concrete and specific reasons in full compliance with the principles established by the Court of Justice in its judgment of 1 July 2008.

This case is still pending.

## B. LEGAL ACTION

In 2009, no rulings were given by the EU courts in cases concerning access to Council documents.

However, five cases challenging the legality of decisions refusing access taken by the Council on the basis of Regulation (EC) No 1049/2001 were pending before the EU courts at the end of 2009, one of which was covered in the 2008 Council report on access to documents to which the reader is invited to refer <sup>28</sup>.

### *New actions for annulment lodged against Council decisions refusing access*

In all, four actions for annulment were lodged in 2009 against decisions refusing access taken by the Council on the basis of Regulation (EC) No 1049/2001.

Firstly, in Case T-233/09, *Acces Info Europe v. Council*, the applicant is challenging the Council's refusal to reveal the identities of the delegations the positions of which are stated in a document concerning a legislative proposal which is still being discussed by the Council's preparatory bodies.

In support of his proceedings for annulment the applicant alleges (a) a violation of the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 in that the Council is alleged not to have shown how disclosure of the identities of the delegations would seriously affect its decision-taking process and, furthermore, had not taken into account the higher public interest justifying disclosure; (b) failure to comply with the obligation to provide adequate justification, in accordance with Article 253 of the EC Treaty and Articles 7(1) and 8(1) of Regulation (EC) No 1049/2001.

There are also two actions for annulment in Cases T-359/09 and T-465/09, *Jurašinović v. Council of the European Union*. The first action for annulment lodged by this applicant requests the annulment of the General Secretariat's decision of 17 June to refuse access to documents concerning

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<sup>28</sup> See the 2008 annual Council report on access to documents, page 18.



the monitoring activities of the EU Monitoring Mission in the area of Knin in Croatia and the Council's subsequent implied refusal in the confirmatory phase. The second action for annulment by the same applicant requests the annulment of the actual decision of the Council on 22 September 2009, in which the Council partially rejected a confirmatory application relating to the above-mentioned documents.

In those two cases the applicant alleges, *inter alia*, that the Council has violated the third indent of Article 4(1) of Regulation (EC) No 1049/2001 in that it has not established how the disclosure of the documents requested would adversely affect the protection of international relations, that it has failed to take account of the diminishing importance of such protection with the passing of time, and, finally, that it has failed to explain how those documents come to be particularly sensitive.

A fourth action for annulment was lodged, in Case T-529/09, *Sophie in't Veld v. Council of the European Union*, requesting the annulment of the Council decision of 29 October 2009, in which the Council partially refused access to 11897/09. That document (classified RESTREINT UE) gives an opinion of the Council Legal Service concerning a Commission Recommendation to the Council to authorise the opening of negotiations between the European Union and the United States of America for an international agreement to make available to the United States Treasury Department financial messaging data to prevent and combat terrorism and terrorist financing. In its decision the Council refused access to certain parts of the document in accordance with the third indent of Article 4(1)(a) (protection of international relations) and the second indent of Article 4(2) (protection of legal advice), but had granted access to those parts of the document not covered by those exceptions.

In support of her action for annulment, the applicant argued that the Council had violated the third indent of Article 4(1)(a) and the second indent of Article 4(2) of Regulation (EC) No 1049/2001 in that it had not established how disclosure of the document requested would have adversely affected the protection of international relations or of legal advice. In addition, it was alleged that the Council had violated Article 4(6) of Regulation (EC) No 1049/2001, in particular the principle of proportionality, by granting very limited partial access to 11897/09. Likewise, the Council had not complied with the obligation to provide justification, which follows from Article 296 of the Treaty on the Functioning of the European Union.

*Pending Court cases concerning Commission decisions to refuse access to documents in which the Council is intervening*

In 2009, the Council intervened in Case C-28/08, *Commission v. Bavarian Lager Co., Ltd*, in support of the Commission's action for annulment against the judgment of the Court of First Instance, in which the latter interpreted the relationship between the public's right of access to documents and the protection of privacy and the integrity of the individual as regards the processing of personal data.

The Council also intervenes in Case T-444/05, *S.p.A. Navigazione Libera del Golfo v. Commission*, in which the applicant implicitly challenged the validity of Article 4(5) of Regulation (EC) No 1049/2001.

## VI. FINAL REMARKS

The Council's experience in implementing Regulation (EC) No 1049/2001 in 2009 highlights the importance of its public register as a search tool for members of the public seeking to exercise their right to access to documents.

As we stated in the first part of this report, visits in 2009 totalled 1 176 017, while total consultations (in numbers of screens viewed) was 10 011 440.

As of 31 December 2009, the register listed 1 371 608 documents (all languages taken together), of which 1 039 973 (75,8 % of those registered) were public. This represented an increase of 14,7 % on the number of documents appearing in the register in 2008 and an increase of 21,4 % in the number of documents directly accessible via the register at the end of 2008. It should also be noted that 69,4 % of the Council documents produced in 2009 – i.e. 122 160 of the 176 073 documents listed in the register during the year – were made directly accessible to the public upon circulation.

Despite the growing number of documents made directly accessible to the public via the register as soon as they were circulated, there was an increase over the reference period in the number of requests (up by 19,1 %). Requests for access mainly related to documents listed in the register.

As confirmed by the statistical data provided in the annex to this report, around 27 % of the requests for access to Council documents which were submitted in 2009 refer to the areas of Justice and Home Affairs, External Relations and CFSP. There is also a clearly growing interest in Council documents concerning the areas of Environment, Health and Consumer Policy and Internal Market (24,4 % of the requests).

A total of 825 of the documents considered (representing roughly 9,8 % of the documents requested in 2009) were classified (34 as CONFIDENTIEL UE and 791 as RESTREINT UE). The often highly complex process of examining such documents is done by the Council staff dealing with the requests as soon as they are received, as well as by officials in the various departments which produced the documents, who, within the framework of the internal consultation procedures between the "Transparency" Service and the originating services, are regularly called upon to examine the requested documents on the basis of the provisions of Regulation (EC) No 1049/2001.

In this regard, the contribution made by the Working Party on Information to the processing of confirmatory applications and the examination of complaints to the Ombudsman should also be recalled. The Working Party met on 15 occasions in 2009. Its main tasks include examining documents in respect of which a confirmatory application has been made, and examining and finalising the draft replies to such applications, which in a number of cases deal with complex issues relating to public safety, defence and military affairs, or international relations.

In 2009, the General Secretariat of the Council had recourse to the possibility of extending the time-limit for examining initial applications in 20,1 % of the cases, which is less than the previous year (22 % in 2008). Processing time averaged 14 working days in 2009 (against 16 days in 2008). For confirmatory applications, which are examined by the Working Party on Information before referral to Coreper and the Council for adoption, the average time was 26 working days in 2009 against 25 working days in 2008.

Thorough examination of initial examinations has during the previous years enabled the number of confirmatory applications to be reduced from a peak of 2.4 % in 2005 to around 1 % of the number of initial applications during recent years. In 2009, there were 33 confirmatory requests which correspond to 1,2 % of initial applications.

**STATISTICS ON PUBLIC ACCESS TO COUNCIL DOCUMENTS****Situation on 04/03/2010****1. Number of applications pursuant to Regulation No 1049/2001**

| 2005  | 2006  | 2007  | 2008  | 2009  |
|-------|-------|-------|-------|-------|
| 2.100 | 2.224 | 1.964 | 2.238 | 2.666 |

**2. Number of documents requested by initial applications**

| 2005  | 2006   | 2007  | 2008   | 2009  |
|-------|--------|-------|--------|-------|
| 9.457 | 11.353 | 7.809 | 10.731 | 8.443 |

**3. Documents released by the General Secretariat of the Council at the initial stage**

| 2005                            | 2006                            | 2007                          | 2008                            | 2009                            |
|---------------------------------|---------------------------------|-------------------------------|---------------------------------|---------------------------------|
| 7.535                           | 9.606                           | 6.123 <sup>1</sup>            | 9.214 <sup>2</sup>              | 6.452 <sup>3</sup>              |
| partially/wholly<br>1.254 6.281 | partially/wholly<br>1.155 8.451 | partially/wholly<br>945 5.178 | partially/wholly<br>1.540 7.674 | partially/wholly<br>1.117 5.335 |

**4. Number of confirmatory applications** (confirmatory applications may be made if initial application is refused)

| 2005 | 2006 | 2007 | 2008 | 2009 |
|------|------|------|------|------|
| 51   | 40   | 18   | 24   | 33   |

**5. Number of documents considered by the Council following confirmatory applications + number of documents released**

| 2005                             | 2006                            | 2007                          | 2008                            | 2009                            |
|----------------------------------|---------------------------------|-------------------------------|---------------------------------|---------------------------------|
| 253                              | 142                             | 30                            | 69                              | 351                             |
| 130<br>partially/wholly<br>60 70 | 99<br>partially/wholly<br>53 46 | 15<br>partially/wholly<br>9 6 | 38<br>partially/wholly<br>19 19 | 88<br>partially/wholly<br>27 61 |

**6. Rate of document released for the procedure as a whole <sup>4</sup>**

| 2005  |       | 2006  |       | 2007  |       | 2008  |       | 2009  |       |
|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 67,3% | 81,2% | 76,8% | 87,7% | 66,7% | 78,9% | 71,8% | 86,3% | 63,9% | 77,5% |

**7. Number of documents referred to in the public Register + number of public/downloadable documents**

| 2005    |                    | 2006    |                    | 2007      |                    | 2008      |                    | 2009      |                      |
|---------|--------------------|---------|--------------------|-----------|--------------------|-----------|--------------------|-----------|----------------------|
| 691.410 | 454.473<br>(65.7%) | 727.685 | 483.577<br>(66.4%) | 1.010.217 | 724.338<br>(71,7%) | 1.195.509 | 883.748<br>(73,9%) | 1.371.608 | 1.039.973<br>(75,8%) |

<sup>1</sup> Based on 7.775 documents considered.<sup>2</sup> Based on 10.718 documents considered.<sup>3</sup> Based on 8.440 documents considered.<sup>4</sup> Based on documents released wholly (left column) or wholly + partially (right column).

## 8. Professional profile of the applicants (initial applications)

|   |                               | 2005  |       | 2006  |       | 2007  |     | 2008  |       | 2009  |       |
|---|-------------------------------|-------|-------|-------|-------|-------|-----|-------|-------|-------|-------|
| Civil society   | Environmental Lobbies         | 17,2% |       | 17,6% |       | 14,2% |     | 1,1%  | 18,3% | 1%    | 17,2% |
|   | Other groups of interests     |       |       |       |       |       |     | 3,9%  |       | 3,8%  |       |
|   | Industrial/ Commercial Sector |       |       |       |       |       |     | 9,7%  |       | 10,8% |       |
|   | NGOs                          |       |       |       |       |       |     | 3,6%  |       | 1,6%  |       |
| Journalists   |                               | 2,3%  |       | 2,3%  |       | 2,9%  |     | 2,8%  |       | 2,8%  |       |
| Lawyers   |                               | 10,2% |       | 9,1%  |       | 8,8%  |     | 9,5%  |       | 11,4% |       |
| Academic world  | University Research           | 31%   | 32,3% | 32,2% | 34,5% | 38,2% | 40% | 32,4% | 33,5% | 32,6% | 33,6% |
|   | Library                       | 1,3%  |       | 2,3%  |       | 1,8%  |     | 1,1%  |       | 1%    |       |
| Public authorities (non-EU institutions, third-country representatives, etc.) |                               | 6,2%  |       | 6,9%  |       | 6,1%  |     | 7,6%  |       | 4,1%  |       |
| Members of the European Parliament and their assistants                       |                               | 2,4%  |       | 1,5%  |       | 1,3%  |     | 1,8%  |       | 1,4%  |       |
| Others  |                               | 12,6% |       | 14,5% |       | 13,3% |     | 14,8% |       | 15,8% |       |
| Undeclared professional origin  |                               | 16,8% |       | 13,6% |       | 13,2% |     | 11%   |       | 12,7% |       |

## 9. Professional profile of the applicants (confirmatory applications)

|   |                               | 2005  |       | 2006  |      | 2007  |       | 2008  |       | 2009  |       |
|---|-------------------------------|-------|-------|-------|------|-------|-------|-------|-------|-------|-------|
| Civil society   | Environmental Lobbies         | 9,4%  |       | 8,6%  |      | 0%    |       | 5,2%  | 21%   | 0%    | 15,6% |
|   | Other groups of interests     |       |       |       |      |       |       | 5,3%  |       | 6,2%  |       |
|   | Industrial/ Commercial Sector |       |       |       |      |       |       | 0%    |       | 0%    |       |
|   | NGOs                          |       |       |       |      |       |       | 10,5% |       | 9,4%  |       |
| Journalists   |                               | 6,3%  |       | 5,7%  |      | 18,7% |       | 10,5% |       | 6,2%  |       |
| Lawyers   |                               | 9,4%  |       | 11,4% |      | 12,5% |       | 10,5% |       | 18,8% |       |
| Academic world  | University Research           | 28,1% | 51,4% | 54,3% | 50%  | 56,2% | 31,6% | 31,6% | 46,9% | 46,9% |       |
|   | Library                       | 0%    | 2,9%  |       | 6,2% |       | 0%    |       | 0%    |       |       |
| Public authorities (non-EU institutions, third-country representatives, etc.) |                               | 3,1%  |       | 0%    |      | 6,3%  |       | 0%    |       | 0%    |       |
| Members of the European Parliament and their assistants                       |                               | 3,1%  |       | 0%    |      | 0%    |       | 5,3%  |       | 3,1%  |       |
| Others  |                               | 15,6% |       | 11,4% |      | 6,3%  |       | 5,3%  |       | 3,1%  |       |
| Undeclared professional origin  |                               | 25%   |       | 8,6%  |      | 0%    |       | 15,8% |       | 6,3%  |       |

## 10. Geographical spread of the applicants (initial applications)

|                 |                     | 2005  | 2006  | 2007  | 2008  | 2009  |
|-----------------|---------------------|-------|-------|-------|-------|-------|
| Belgium         |                     | 27,6% | 26,2% | 26,4% | 31%   | 28,2% |
| Bulgaria        |                     | 0,4%  | 0,6%  | 0,1%  | 0,2%  | 0,3%  |
| Czech Republic  |                     | 0,9%  | 1%    | 1,4%  | 0,9%  | 1,2%  |
| Denmark         |                     | 1,2%  | 1,3%  | 1,1%  | 1,1%  | 1%    |
| Germany         |                     | 12,8% | 15,5% | 16%   | 14,4% | 14,7% |
| Estonia         |                     | 0,1%  | 0,4%  | 0%    | 0%    | 0,1%  |
| Greece          |                     | 1,2%  | 1,3%  | 1,3%  | 0,7%  | 0,8%  |
| Spain           |                     | 5,4%  | 5,7%  | 5%    | 6,4%  | 5,9%  |
| France          |                     | 7,7%  | 8,1%  | 7,1%  | 7,1%  | 8%    |
| Ireland         |                     | 1%    | 0,9%  | 0,6%  | 0,6%  | 0,9%  |
| Italy           |                     | 6,9%  | 6,6%  | 6%    | 6%    | 4,8%  |
| Cyprus          |                     | 0,1%  | 0,3%  | 0,3%  | 0,2%  | 0,3%  |
| Latvia          |                     | 0,1%  | 0,2%  | 0%    | 0,2%  | 0,2%  |
| Lithuania       |                     | 0,4%  | 0,4%  | 0,1%  | 0,1%  | 0,2%  |
| Luxembourg      |                     | 0,6%  | 0,7%  | 1%    | 1,6%  | 1,8%  |
| Hungary         |                     | 0,9%  | 0,5%  | 0,7%  | 0,9%  | 1%    |
| Malta           |                     | 0,2%  | 0,2%  | 0,3%  | 0,2%  | 0,3%  |
| Netherlands     |                     | 6,9%  | 6%    | 5,8%  | 5,7%  | 5,7%  |
| Austria         |                     | 1,9%  | 1,6%  | 1,7%  | 1,3%  | 1,9%  |
| Poland          |                     | 1,4%  | 1,5%  | 1,5%  | 1,5%  | 1,4%  |
| Portugal        |                     | 1,1%  | 1,2%  | 0,9%  | 0,9%  | 0,8%  |
| Romania         |                     | 0,2%  | 0,7%  | 1,1%  | 0,6%  | 1,2%  |
| Slovenia        |                     | 0,2%  | 0,4%  | 0,4%  | 0,2%  | 0,4%  |
| Slovakia        |                     | 0,3%  | 0,3%  | 0,3%  | 0,3%  | 0,6%  |
| Finland         |                     | 0,4%  | 0,5%  | 0,8%  | 0,6%  | 0,2%  |
| Sweden          |                     | 1,8%  | 1,6%  | 1,8%  | 1,8%  | 1,8%  |
| United Kingdom  |                     | 8%    | 7,9%  | 9,5%  | 7,4%  | 8,7%  |
| Third countries | Candidate countries | 1,3%  | 1,7%  | 1%    | 0,4%  | 0,3%  |
|                 | Others              | 6,7%  | 6,8%  | 7%    | 7,3%  | 6,5%  |
| Non specified   |                     | 3,2%  | 1,8%  | 0,8%  | 0,4%  | 0,8%  |



## 11. Geographical spread of the applicants (confirmatory applications)

|                 | 2005                | 2006  | 2007  | 2008 | 2009  |
|-----------------|---------------------|-------|-------|------|-------|
| Belgium         | 28,1%               | 17,1% | 37,5% | 30%  | 22,6% |
| Bulgaria        | 0%                  | 0%    | 0%    | 0%   | 0%    |
| Czech Republic  | 0%                  | 0%    | 6,3%  | 5%   | 0%    |
| Denmark         | 0%                  | 0%    | 0%    | 0%   | 0%    |
| Germany         | 12,5%               | 22,8% | 6,2%  | 20%  | 25,8% |
| Estonia         | 0%                  | 0%    | 0%    | 0%   | 0%    |
| Greece          | 0%                  | 0%    | 0%    | 0%   | 0%    |
| Spain           | 3,1%                | 0%    | 0%    | 5%   | 9,7%  |
| France          | 3,1%                | 5,7%  | 6,2%  | 5%   | 6,4%  |
| Ireland         | 0%                  | 0%    | 0%    | 0%   | 0%    |
| Italy           | 9,4%                | 8,6%  | 6,2%  | 5%   | 6,4%  |
| Cyprus          | 3,1%                | 0%    | 0%    | 0%   | 0%    |
| Latvia          | 0%                  | 0%    | 0%    | 0%   | 0%    |
| Lithuania       | 0%                  | 0%    | 0%    | 0%   | 0%    |
| Luxembourg      | 0%                  | 0%    | 0%    | 0%   | 3,2%  |
| Hungary         | 0%                  | 2,9%  | 0%    | 0%   | 0%    |
| Malta           | 0%                  | 0%    | 0%    | 0%   | 0%    |
| Netherlands     | 9,4%                | 8,6%  | 6,3%  | 10%  | 6,5%  |
| Austria         | 6,3%                | 0%    | 0%    | 0%   | 0%    |
| Poland          | 0%                  | 2,9%  | 0%    | 0%   | 0%    |
| Portugal        | 0%                  | 0%    | 0%    | 5%   | 0%    |
| Romania         | 0%                  | 0%    | 0%    | 0%   | 0%    |
| Slovenia        | 0%                  | 0%    | 0%    | 0%   | 0%    |
| Slovakia        | 0%                  | 0%    | 6,3%  | 0%   | 0%    |
| Finland         | 0%                  | 0%    | 0%    | 0%   | 0%    |
| Sweden          | 3,1%                | 2,8%  | 0%    | 0%   | 0%    |
| United Kingdom  | 18,8%               | 22,9% | 25%   | 5%   | 9,7%  |
| Third countries | Candidate countries | 0%    | 0%    | 0%   | 0%    |
|                 | Others              | 3,1%  | 5,7%  | 0%   | 0%    |
| Non specified   | 0%                  | 0%    | 0%    | 10%  | 0%    |

## 12. Sector

|   | 2005  | 2006  | 2007  | 2008  | 2009  |
|---|-------|-------|-------|-------|-------|
| Agriculture, Fisheries                            | 4,2%  | 5,9%  | 6,8%  | 5,7%  | 7,3%  |
| Internal Market                                   | 6,2%  | 4,6%  | 2,9%  | 3,4%  | 7,7%  |
| Research  | 0,3%  | 0,6%  | 0,4%  | 0,1%  | 0,5%  |
| Culture   | 0,5%  | 1,1%  | 0,5%  | 0,3%  | 0,3%  |
| Education/Youth                                   | 0,7%  | 1,2%  | 1,1%  | 0,5%  | 0,6%  |
| Industry  | 0,4%  | 0,3%  | 0,3%  | 0,7%  | 0,6%  |
| Competitiveness                                   | 5,3%  | 5,8%  | 1,1%  | 2,6%  | 1,9%  |
| Energy  | 1,6%  | 1,1%  | 2,1%  | 2%    | 3,5%  |
| Transport   | 5,3%  | 3,8%  | 3%    | 2,5%  | 1,9%  |
| Environment                                       | 7,7%  | 6,6%  | 8,2%  | 10%   | 8,6%  |
| Health and Consumer                               | 3,1%  | 2,3%  | 2,1%  | 1,9%  | 8,1%  |
| Economic and Monetary Policy                      | 2,9%  | 2,6%  | 2,2%  | 2,6%  | 2,6%  |
| Tax Questions – Fiscal Issues                     | 4,4%  | 2,5%  | 2,4%  | 6,3%  | 7,6%  |
| External Relations – CFSP                         | 12,8% | 14,3% | 18,1% | 16,2% | 12,2% |
| Civilian Protection                               | 0,1%  | 0,1%  | 0,6%  | 0,2%  | 0,2%  |
| Enlargement                                       | 2,2%  | 1,8%  | 1%    | 0,7%  | 1,4%  |
| Defence and Military matters                      | 2,5%  | 2,4%  | 6%    | 3,4%  | 4,6%  |
| Assistance for Development                        | 0,7%  | 0,7%  | 0,2%  | 0,1%  | 0,3%  |
| Regional Policy and<br>Economical/Social Cohesion | 0,9%  | 1,2%  | 0,1%  | 0%    | 0%    |
| Social Policy                                     | 3%    | 2,9%  | 1,9%  | 3%    | 3,4%  |
| Justice and Home Affairs                          | 22,5% | 24,5% | 26,7% | 25,4% | 15,3% |
| Legal questions                                   | 3,5%  | 3,8%  | 3,5%  | 3,5%  | 2,7%  |
| Functioning of the institutions                   | 1,3%  | 1,7%  | 1,1%  | 0,9%  | 0,8%  |
| Financing of the Union<br>(Budget, Statute)       | 0,2%  | 0,6%  | 0,2%  | 0,1%  | 0,2%  |
| Transparency                                      | 0,3%  | 0,6%  | 0,3%  | 0,1%  | 0,3%  |
| General policy questions                          | 1%    | 1%    | 0,4%  | 0,6%  | 0,5%  |
| Parliamentary Questions                           | 5,4%  | 5,5%  | 5,4%  | 4,4%  | 4,1%  |
| Various   | 0,4%  | 0,4%  | 0,4%  | 0,7%  | 0,5%  |

**13. Reasons for refusal of access (replies provided by the General Secretariat of the Council at the initial stage)**

|  | 2005 |       | 2006 |       | 2007 |       | 2008 |       | 2009 |       |
|--|------|-------|------|-------|------|-------|------|-------|------|-------|
|  | #    | %     | #    | %     | #    | %     | #    | %     | #    | %     |
| Protection of public interest as regards public security   | 302  | 15,8% | 253  | 17,1% | 219  | 13,3% | 91   | 6,3%  | 109  | 5,6%  |
| Protection of public interest as regards defence and military matters  | 123  | 6,4%  | 67   | 4,5%  | 38   | 2,3%  | 35   | 2,4%  | 67   | 3,5%  |
| Protection of public interest as regards international relations   | 395  | 20,6% | 182  | 12,3% | 249  | 15,1% | 401  | 27,7% | 439  | 22,7% |
| Protection of public interest as regards the financial, monetary or economic policy of the Community or a Member State | 16   | 0,8%  | 1    | 0,1%  | 0    | 0%    | 0    | 0%    | 0    | 0%    |
| Protection of privacy and the integrity of the individual (protection of personal data)                                | 4    | 0,2%  | 5    | 0,3%  | 4    | 0,2%  | 7    | 0,5%  | 5    | 0,3%  |
| Protection of commercial interests of a natural or legal person, including intellectual property                       | 0    | 0%    | 0    | 0%    | 1    | 0,1%  | 0    | 0%    | 1    | 0%    |
| Protection of court proceedings and legal advice   | 34   | 1,8%  | 29   | 2%    | 14   | 0,8%  | 22   | 1,5%  | 8    | 0,4%  |
| Protection of the purpose of inspections, investigations and audits  | 1    | 0%    | 4    | 0,3%  | 0    | 0%    | 2    | 0,1%  | 1    | 0,1%  |
| Protection of the Institution's decision-making process  | 925  | 48,3% | 637  | 43,2% | 627  | 38%   | 519  | 35,9% | 757  | 39,2% |
| Several reasons together or other reasons  | 116  | 6,1%  | 298  | 20,2% | 498  | 30,2% | 368  | 25,5% | 544  | 28,2% |
| Document not held by the Council/Other author  | 0    | 0%    | 0    | 0%    | 0    | 0%    | 1    | 0,1%  | 0    | 0%    |

**14. Reasons for refusal of access (replies provided by the General Secretariat of the Council following confirmatory applications)**

|  | 2005 |       | 2006 |       | 2007 |       | 2008 |       | 2009 |       |
|--|------|-------|------|-------|------|-------|------|-------|------|-------|
|  | #    | %     | #    | %     | #    | %     | #    | %     | #    | %     |
| Protection of public interest as regards public security   | 61   | 49,6% | 16   | 37,2% | 1    | 6,7%  | 5    | 16,1% | 20   | 7,6%  |
| Protection of public interest as regards defence and military matters  | 7    | 5,7%  | 7    | 16,3% | 0    | 0%    | 0    | 0%    | 0    | 0%    |
| Protection of public interest as regards international relations   | 25   | 20,3% | 6    | 14%   | 3    | 20%   | 24   | 77,4% | 38   | 14,5% |
| Protection of public interest as regards the financial, monetary or economic policy of the Community or a Member State | 0    | 0%    | 0    | 0%    | 0    | 0%    | 0    | 0%    | 0    | 0%    |
| Protection of privacy and the integrity of the individual (protection of personal data)                                | 0    | 0%    | 0    | 0%    | 0    | 0%    | 0    | 0%    | 0    | 0%    |
| Protection of commercial interests of a natural or legal person, including intellectual property                       | 0    | 0%    | 0    | 0%    | 0    | 0%    | 0    | 0%    | 0    | 0%    |
| Protection of court proceedings and legal advice   | 0    | 0%    | 2    | 4,6%  | 0    | 0%    | 0    | 0%    | 0    | 0%    |
| Protection of the purpose of inspections, investigations and audits  | 0    | 0%    | 0    | 0%    | 0    | 0%    | 0    | 0%    | 0    | 0%    |
| Protection of Institution's decision-making process  | 14   | 11,4% | 3    | 7%    | 0    | 0%    | 2    | 6,5%  | 0    | 0%    |
| Several reasons together or other reasons  | 16   | 13%   | 9    | 20,9% | 11   | 73,3% | 0    | 0%    | 205  | 77,9% |
| Document not held by the Council/other author  | 0    | 0%    | 0    | 0%    | 0    | 0%    | 0    | 0%    | 0    | 0%    |

**15. Average number of working days to reply to an application or to a complaint made to the European Ombudsman**

|  | 2005                   | 2006                   | 2007                   | 2008                   | 2009                   |
|--|------------------------|------------------------|------------------------|------------------------|------------------------|
| For the initial applications                   | 13 (2100 closed appl.) | 14 (2224 closed appl.) | 13 (1964 closed appl.) | 16 (2238 closed appl.) | 14 (2665 closed appl.) |
| For the confirmatory applications <sup>5</sup> | 26 (51 closed appl.)   | 24 (40 closed appl.)   | 28 (18 closed appl.)   | 25 (25 closed appl.)   | 26(33 closed appl.)    |
| Ponderated average (initial + confirmatory)    | 13,31                  | 14,17                  | 13,14                  | 16,1                   | 14,15                  |
| Ombudsman <sup>5</sup>                         | 38                     | 57                     | -                      | 44                     | 50                     |

**16. Number of applications with prolonged deadline in conformity with Art. 7(3) and 8(2) of Regulation (EC) No 1049/2001**

|  | 2005                            | 2006                            | 2007                            | 2008                            | 2009                            |
|--|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| Initial applications                   | 327 of 2100, being 15,6% of the | 414 of 2224, being 18,6% of the | 386 of 1964, being 19,7% of the | 497 of 2238, being 22,2% of the | 536 of 2666, being 20,1% of the |
| Confirmatory applications <sup>5</sup> | 40 [of 51]                      | 32 [of 40]                      | 14 [of 18]                      | 20 [of 25]                      | 32 [of 33]                      |

<sup>5</sup> Confirmatory applications and complaints to the European Ombudsman are examined by the Council's Working Party on Information and by the Permanent Representatives Committee (Part 2). Replies to the applicants and to the European Ombudsman are adopted by the Council.