

STAFF GUIDE TO PUBLIC ACCESS TO COMMISSION DOCUMENTS

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Commission Decision C(2001) 3714 of 5 December 2001 amending its Rules of Procedure

SEC(97)1293

SEC(2003)260/3

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INTRODUCTION

The purpose of this guide is to help staff to deal with applications for access both to published documents (or documents intended for publication) and to internal documents.

Applications for published documents should be handled in the same way as straightforward requests for information, in accordance with the Code of Good Administrative Behaviour. Only requests relating to internal documents - that is, documents that have not been and are not intended to be published - must be handled in accordance with Regulation 1049/2001 regarding public access to documents.

A. ACCESS TO COMMISSION PUBLICATIONS

1. What should you do if you receive an application for a document that has already been published by the Commission?

Three types of situation might arise:

- the application relates to a document published and sold by the Publications Office (EUR-OP);

The most important document published by the Office for Official Publications of the European Communities (EUR-OP) is the **Official Journal (OJ)**. The OJ consists of two complementary editions and a Supplement:

- the L series (Legislation) contains all legislative acts whose publication is obligatory under the Treaties establishing the European Communities as well as many other acts,
- the C series (Information and Notices) contains a wide range of Community information other than legislation,
- the Supplement (S) contains all invitations to tender for public works and supply contracts.

The L and C series are published daily and the Supplement is published from Tuesdays to Saturdays. The OJ is available in the 11 official languages of the European Union.

EUR-OP also publishes other types of document (special series of COM documents, studies, reports etc.).

If you receive an application relating to a document published by EUR-OP you can tell the applicant to contact one of **EUR-OP's sales agents** (see list of addresses in the Annex) which distribute the publications for which a charge is made.

You can also suggest that the applicant consult Eur-Lex, which gives access to all EU legislation, or CELEX (**fee-paying**), which contains most of the acts published in the L and C series of the OJ. Eur-Lex and CELEX can be found on the EUROPA server (<http://europa.eu.int>).

- the application relates to a publication by a Commission department;

Some publications may be obtained from a Service or Directorate-General (DG). Applications for these will be sent to the Service or DG whose name appears in the title of the publication.

- the application relates to free publications, such as brochures and general information booklets;

In this case you should advise the applicant to apply to one of the Commission's Representations in the Member States, its Delegations in non-member countries or the information relays and networks such as the Info-Points Europe and the Rural Information Carrefours (see list of addresses in the Annex).

2. *What should you do if the publication requested is not yet for sale?*

Sometimes there is a delay between a document being adopted by the Commission and becoming available for sale. If the document requested is not yet available from the EUR-OP sales agents in either paper or electronic form, the applicant can contact the Commission directly.

3. *How should you answer an application for a document published by another Community institution or organisation?*

Applicants requesting publications issued by other Community institutions or bodies, including the agencies, should be referred to the EUR-OP sales agents (see list of addresses in the Annex). In the case of certain publications, however, they will have to apply directly to the institution or body whose name appears under the title of the publication.

4. *How should you respond to an application for information?*

All applications for information should be handled in accordance with the Code of Good Administrative Behaviour, which may be found on the IntraComm at (http://www.cc.cec/guide/codepers/index_en.htm).

If the application for information is of a general nature and does not directly concern your field, you can suggest that the applicant contact Europe Direct (http://europa.eu.int/europedirect/en/index_en.html), which deals with questions from the public.

B. ACCESS TO UNPUBLISHED DOCUMENTS

STAGE 1: When the application arrives

5. *Is it a genuine application for access to a document?*

If the application relates to a **document that has already been or is going to be published** go back to the first part of this Guide (questions 1 to 4).

However, if the application relates to an **unpublished document** it qualifies as a "genuine" application for access to a document, and the rules set out below will apply.

Only genuine applications should be registered as applications for access under Regulation No 1049/2001 and included in the statistics.

6. Under what conditions are applications for access admissible?

Applications for access must be made **in writing** in one of the official languages of the Community and may take the form of a letter, an e-mail or a fax. If you receive a telephone request ask the requester to apply in writing.

Applicants are not obliged to state reasons for their applications for access (*Article 6 of the Regulation; Article 2 of the internal rules*).

7. What documents are covered by the legislation on access?

The Regulation applies to all documents held by the Commission, i.e. that it has produced or received, provided that they relate to its activities. A document is defined as any content, whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording), concerning a matter relating to the policies, activities and decisions falling within the Commission's sphere of responsibility (*Articles 2 and 3 of the Regulation*). Private correspondence is not, therefore, covered by the Regulation. Access to documents over 30 years old is governed by a separate Regulation (see question 9).

Any **internal** Commission document, on the other hand, may be requested. An internal document is one which either has not been finalised or is not intended for publication.

Examples would include:

- preparatory documents on Commission policy decisions and initiatives, such as preliminary drafts, interim reports, draft legislative proposals or decisions,
- the explanatory documents or other types of information such as statistics, memorandums or studies on which Commission decisions and policy measures are based,
- exchanges of correspondence between the Commission and the Member States, members of the public and companies.

Access may also be requested to documents originating with third parties, received and kept by the Commission. By "third party" we mean any natural or legal person or any entity outside the institution concerned, including the Member States, other Community or non-Community institutions and bodies and third countries (*Articles 2 and 3 of the Regulation*).

Applications for access to **information in a database** other than those already accessible to the public, are treated in the same way as applications for access to a document. In such cases the Commission will

supply the information requested on condition that it is not covered by one of the exceptions provided for in the Regulation (see question 21) and:

- the application does not require new computer instructions to be issued in order to retrieve the data;
- the application can be processed by routine operations.

8. *Can access to classified documents be requested?*

Yes, because no category of documents is excluded a priori from the right of access, including classified documents (*Article 2 of the Regulation*). For further information on classified documents see question 27.

9. *What rules apply to documents in the Historical Archives?*

Up to the end of the 30-year period, documents are subject to Regulation No 1049/2001 on public access to documents. It is up to the department that received or produced the document (or the department currently exercising these powers) to search for the material and authorise access, regardless of where the document is being kept. If necessary the Historical Archives can lend assistance with the search (for example by supplying a list of files that might contain the documents being sought).

After the 30-year period access to documents is governed by Council Regulation No 354/83 of 1 February 1983 (OJ L 43, 15.2.83, pp. 1-3) concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community.¹

Files may be consulted on microfiche or other medium, after a written application, at the Historical Archives department (fax: 61095).

For more information contact the department which runs the Historical Archives (see address at the end of the Guide) or consult the Website at http://europa.eu.int/historical_archives.

10. *Does the Commission grant access to documents produced by other organisations?*

Yes, the Commission does now grant access to third parties' documents.

¹ On 19 August 2002 the Commission adopted a proposal for a Council Regulation amending Regulation No 354/83 (COM(2002) 462) to bring it into line with Regulation No 1049/2001 (as required by Article 18(2) of that Regulation). This proposal for a Regulation abolishes the category exemptions contained in Regulation No 354/84, as they are incompatible with the "access to documents" Regulation, which states that access to a document can only be refused if its disclosure would undermine the protection of an interest explicitly protected by that Regulation. It also sets out the terms on which the three exceptions mentioned specifically in Regulation No 1049/2001 (privacy, commercial interests and sensitive documents as defined in Article 9) can continue to apply following the expiry of the 30-year period. This proposal was sent for consultation to the EP, which suggested a number of amendments. On 30 April 2003, the Commission adopted an amended proposal (COM(2003)244), which takes into account a number of drafting changes proposed by the EP. This amended proposal is currently being examined by the Council's information group and is expected to be adopted by the Council before the summer of 2003.

By "third party" we mean any natural or legal person or any entity outside the institution concerned, including the Member States, other Community or non-Community institutions and bodies and third countries (*Articles 2 and 3 of the Regulation*). For the specific rules applying to third parties' documents see questions 24a, 24b, 24c, 24b and 25.

11. Where should applications for access be sent?

Applications for access may be sent to the Secretariat-General of the Commission (SG) or to the competent DG or Service (*Article 2 of the internal rules*).

Secretariat-General
European Commission
Unit SG/E/3, "Transparency, Relations with Stakeholders and External Organisations"
B-1049 BRUSSELS

Fax: 00/32/2/296.84.98

E-mail address: sg-acc-doc@cec.eu.int

For all other Directorates-General:

European Commission
B-1049 BRUSSELS

12. Who is entitled to apply for access to a document?

Any citizen of the Union or any natural or legal person resident or having its registered office in a Member State has a right of access to Commission documents, subject to the principles, conditions and limits laid down in the Regulation.

Citizens of third countries who are not resident in a Member State and legal persons that do not have their registered office in one of the Member States enjoy the right of access to Commission documents under the same conditions as the first category cited above (*Article 2 of the Regulation, Article 1 of the internal rules*).

An application by an official or a stagiaire that does not relate directly to that person's duties should also be treated as an application for access.

It is important to emphasise that no category of applicants (journalists, MEPs, interest groups) receives preferential treatment as regards the time taken to reply, the way their applications are treated or the possibilities for appeal.

N.B. Do not confuse public access to documents with the rules governing relations between the Commission and the other institutions, particularly as regards the official transmission of documents. The departments responsible for relations with other institutions are:

- for the Council: General Secretariat, Directorate D
- for the European Parliament, the European Ombudsman, the Economic and Social Committee and the Committee of the Regions: SG, Directorate E (Mr MASSANGIOLI, tel.: 50746)
- for the Court of Justice and the Court of First Instance: Legal Service ("Institutions" Team)
- for the Court of Auditors: DG Budget (Mr VONTHRON tel.: 52983).

The disclosure of documents to national courts is subject to special provisions described in SEC(97)1293 (cf. Annex).

12b. How should you deal with an application from an MEP?

In the same way as you would deal with any other application from a member of the public. The framework agreement on the forwarding of confidential information to the European Parliament applies only to requests submitted by the Chairmen of the Parliamentary Committees concerned or by the Bureau or the Conference of Presidents in the exercise of Parliament's powers of control. Clearly, information provided under the framework agreement falls outside the public domain, that is to say it is covered by one of the exceptions to Regulation 1049/2001 and for that reason would not be passed to the public on request.

STAGE 2: Examination of an initial application

13. Who is responsible for handling applications for access?

The administration of initial applications for access is decentralised. The DGs and Services handle applications relating to documents within their sphere of responsibility.

In the interests of greater efficiency, each Service and DG has designated a **document access coordinator** (see list in Annex). **All applications for access must go through these coordinators, who monitor progress in providing replies.**

14. Does the application for access have to be registered?

The DG or Service must register all applications it receives directly. This will be done either in the Gestdem database (shared management database for applications for access to documents) or in the DG's own registration system. A copy of the request will in any case be sent to the SG for information.

Applications sent to the SG will be passed on to the DG or Service empowered to deal with that subject area and responsible for issuing the document. In this case, the SG registers the application in the Gestdem database.

If a request for access is sent to a Delegation or Representation, the latter will not register the application (so that the 15-day deadline for replying does not start to run), but will send it, preferably by e-mail or

fax, either to the person responsible for access to documents in the DG in charge, or to the “access to documents” unit in the SG (names and contact details in annex).

15. Does an acknowledgement of receipt have to be sent to the applicant?

If the originating DG or Service receives a request for access directly it will send an acknowledgement of receipt to the applicant as soon as it has registered the application, unless the reply is sent by return of post (see model letters attached) (*Article 7 of the Regulation; Article 3 of the internal rules*).

If the application arrives via the SG, the latter will send the acknowledgement of receipt to the applicant.

The acknowledgement of receipt should preferably be sent electronically or in the same form as the application itself (fax, letter...).

16. What is the normal time limit for replying to an initial application ?

A written reply must be given within 15 working days of the date of registration of the application by the DG or Service involved.

"Working days" means any days other than those on which the Commission departments are closed. Thus weekends and the Christmas, Easter and Ascension holidays are not "working days". The summer holiday period, on the other hand, is considered a working period. Take the following example: an application for access arrives and is registered on 10 December 2001. In order to comply with the deadline of 15 working days a reply must be sent to the applicant by Wednesday 9 January 2002 at the latest (10-14 December + 17-21 December + 3-4 January + 6-9 January = 15 working days).

We must stress here that this **deadline must be met**. Failure to reply within this period is equivalent to refusing access. This means that after this deadline has lapsed an applicant who has not received a reply may make a confirmatory application to the Secretary-General (see question 41) (*Article 7 of the Regulation; Article 2 of the internal rules*).

17. Can the limit of 15 working days for replying to applications be extended

In exceptional circumstances the prescribed time limit may be extended by 15 working days. The applicant will then be notified of the extension of the time limit in a holding letter explaining the reasons for the delay (see model letters at the end of this Guide) (*Article 7 of the Regulation; Article 2 of the internal rules*).

Examples of reasons for extending the time limit for replying:

- the number of documents requested / the volume of material requested;
- the need to consult other Commission departments;
- the need to consult a third party author;
- the complexity of the application (e.g. partial access)
- difficulty in finding the document requested (e.g. an old document), etc.

18. What happens if the Commission fails to reply to an initial application?

Failure by the Commission to reply to an application within the prescribed period is equivalent to a refusal to grant access and constitutes grounds for the applicant to submit a confirmatory application (*Article 7 of the Regulation*).

19. What is the procedure for examining applications for access?

The general principle is that the public must be given the widest possible access to the Commission's unpublished documents, subject to respect for certain public and private interests and the smooth running of the Commission's work (see question 21 for exceptions to the principle of granting access to Commission documents). Each application for access must be treated separately and examined thoroughly, **case by case**.

20. Are there any documents that are automatically accessible to the public?

Yes. The agendas and ordinary minutes of Commission meetings, for example, are made directly accessible on the EUROPA server once they have been approved (<http://europa.eu.int>). The following documents are automatically supplied on request and, as far as possible, made directly accessible by electronic means:

texts adopted by the Commission for publication in the OJ;
originating with third parties that have already been disclosed by the authors or with their consent;
documents disclosed in response to an earlier request (*Article 9 of the internal rules*).

Moreover, if it is clearly apparent after a quick check that no exception applies to them, the following documents are also made directly accessible, as far as possible by electronic means: preparatory documents relating to proposals, legislative acts and communications, reports or working documents, once they have been adopted by the Commission. As part of this check, care should be taken in particular to ensure that the documents do not reflect individual opinions or statements, which could be covered by the exception in the second subparagraph of Article 4(3) of Regulation 1049/2001. (See also question 30)

21. What exceptions are there to the general principle of access to documents?

Article 4 of the Regulation clearly specifies the exceptions to the right of access, which may be classified as follows:

1) access may be refused if disclosure of the document would undermine the protection of:

- the public interest as regards public security, defence and military matters, international relations, the financial, monetary or economic policy of the Community or a Member State;
- privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data;

2) unless an overriding public interest warrants the disclosure of the document in question, access may be refused if disclosure would undermine the protection of:

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

3) unless an overriding public interest warrants the disclosure of the document in question, access may be refused if disclosure would seriously undermine the Commission's decision-making process. This applies to any document:

- drawn up by the Commission for internal use or received by it, which relates to a matter on which it has not yet taken a decision;
- containing opinions for internal use as part of deliberations and preliminary consultations within the Commission, even after the decision has been taken.

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

N.B. A refusal to grant access must be based on one of the exceptions explicitly provided for in the Regulation. The reasons for the refusal must be properly stated.

22. Are there any other exceptions that can be applied?

No. The only exceptions are those provided for in Article 4 of the Regulation (see previous question). Where an application relates to a “sensitive” document originating with a third party, it may not be disclosed if the originator opposes its disclosure (*Articles 4 and 9 of the Regulation*) (see question 27 on sensitive documents).

Some specific legislative acts contain confidentiality clauses setting out the conditions in which certain documents or information may be disclosed. A detailed analysis of over 120 specific provisions in Community legislation in force shows that they tend to fall into two categories.

Some specific rules should be regarded as special cases falling within one of the general exceptions set out in Article 4 of Regulation 1049/2001. An examination of these rules has not shown any incompatibility with the principles of Regulation 1049/2001. The interests they protect correspond to those that constitute grounds for refusing access under the exceptions provided for by Regulation 1049/2001. Accordingly, any refusal to grant access to a document must be justified on the basis of one of the exceptions provided for in Regulation 1049/2001, the reference to the specific legal instrument serving merely to support the justification.

Other clauses grant interested parties specific rights of access going beyond the public right of access. The more favourable specific provisions which relate to transparency, and provide for greater access for certain categories of person in view of their status as “parties” to a procedure, should be considered to be “*lex specialis*” in relation to the Regulation. Under these rules, certain people will therefore be granted access to documents which would not be accessible to the public under the system of exceptions provided for by Article 4 of the Regulation.

23. *Does the system of exceptions always justify refusing access to the entire document?*

No. If only part of the document requested is covered by one or more of the exceptions provided for in the Regulation, the other parts of the document may be disclosed (*Article 4(6) of the Regulation*).

Granting partial access will mean concealing or deleting the words, sentences or paragraphs to which an exception applies. If access can only be granted to an extract from a document the applicant must be told what the total volume of the document requested is.

The courts have accepted that, in the interests of sound administration, the Commission may invoke the principle of proportionality as regards the effort it has to make to afford partial access to a document. Thus in exceptional cases, where the volume of the document or of the passages to be censored would entail a disproportionate amount of administrative work, the Commission may apply this principle to weigh up the interest served by public access to these fragmentary extracts against the workload involved in producing them.²

24a. *What is the procedure for examining an application for access to a document originating with a third party other than a Member State?*

When the Commission receives an application for access to a document which it has in its possession but which originates with a third party, the DG or Service holding the document will check whether one of the exceptions provided for in the Regulation applies (see question 21). If the document is classified according to the Commission's rules on security see question 27.

If, after this examination, the DG or Service holding the document considers that access should be refused on the grounds of one of the exceptions provided for in the Regulation, the refusal is sent to the applicant without consulting the third party author.

The DG or Service holding the document may grant a request for access without consulting the third party author if:

² Case T-14/98 *Hautala v Conseil*, judgment given on 19 July 1999, point 86, confirmed in Case C-353/99 P *Conseil v Hautala*, judgment given on 6 December 2001, point 30; Case T-204/99 *Mattila v Conseil and Commission*, judgment given on 12 July 2001, points 68 and 69; Case T-21/00 *Kuijter v Conseil*, judgment given on 7 February 2002, point 57.

- the document requested has already been disclosed either by the author or under the terms of the Regulation or similar provisions;
- disclosure (or partial disclosure) of the document's content manifestly does not affect one of the interests which the exceptions provided for in Regulation 1049/2001 are intended to protect.

In all other cases the third party author must be consulted (*Article 4 of the Regulation; Article 5 of the internal rules*).

*

The consultation may be informal (e.g. by e-mail) but a record should always be kept.

The third party author who is consulted is given a period in which to reply that must be at least five working days, but that allows the Commission to meet its own deadline for replying to the application. In the absence of any reply within the stated period, or if the author cannot be found or identified, the Commission will decide according to the system of exceptions provided for in the Regulation, taking account of the legitimate interests of the third party on the basis of the information at its disposal (*Article 5 of the internal rules*).

24b. How does the Commission deal with an application for access to a document originating with one of the two other institutions covered by the Regulation?

The three institutions agreed by common accord (through a “Memorandum of understanding” signed on 9 July 2002) to consult the originating institution automatically in the case of an application for access to a document that the institution in question had not yet made public. The originating institution must respond quickly, within a maximum of five working days. Clearly, the final decision must be taken by the institution to which the application was sent, the originating institution of the document only having a right of veto if the application relates to a “sensitive document” within the meaning of Article 9 of Regulation 1049/2001.

Consultations must be sent by fax or e-mail to the following addresses:

- for the EP:

register@europarl.eu.int

fax: 352-4300 22978 or 32.2-284 90 17

- for the Council:

access@consilium.eu.int

fax: 32.2-285 63 61

24c. What if the application relates to a document originating with another institution not covered by the Regulation?

As with any other “third party” within the meaning of Article 3 of Regulation 1049/2001, the other institutions must be consulted in case of doubt as to the applicability of an exception when an application is made for access to one of their documents.

Since some of these institutions - such as the Court of Auditors, the European Investment Bank or the European Central Bank - send the Commission a large number of documents whose disclosure could damage one of the interests protected by the system of exceptions provided for in Article 4 of the

Regulation, it is recommended that they be consulted systematically if there is the slightest doubt as to accessibility.

24d. *What happens if the Commission intends to grant access to a document contrary to the express recommendation of a third party author other than a Member State?*

If the Commission intends to grant access to a document contrary to the express recommendation of its author, it will inform the author of its intention to disclose the document after a period of 10 working days and inform it of the possibilities for appealing against disclosure (*Article 5 of the internal rules*).

25. *What is the procedure for examining an application for access to a document originating with a Member State?*

In addition to cases where there are doubts about the application of an exception and all third party authors are consulted, a Member State will also be consulted about plans to grant access to one of its documents if:

- the document was sent to the Commission before the date on which Regulation No 1049/2001 came into force (i.e. 3 December 2001); or
- the Member State has asked the Commission not to disclose the document without its prior agreement (in accordance with Article 4(5) of Regulation No 1049/2001) (*Article 5 of the internal rules*).

Where a Member State refuses to grant access to one of its documents, this refusal must be respected in accordance with Article 4(5) of Regulation 1049/2001.

To consult a Member State, the request for consultation must be sent to the appropriate member of the Council's information group, if necessary with a copy to the DG's customary contact at the Ministry (cf. attached list of members of the information group).

(For the consultation arrangements see the second part of question 24a.)

26. *Can the Member States consult the Commission in the event of an application relating to one of its documents?*

Yes. A Member State that receives an application for access to a document originating with the Commission may consult the SG, which will determine which DG or Service is responsible for the document within the Commission. The issuing DG or Service will reply to the request after consulting the SG (*Article 5 of the internal rules*), indicating what the Commission's position would have been with regard to the provisions of Regulation 1049/2001 if it had itself received the application.

27. *What is the procedure for examining an application relating to a classified or sensitive document?*

Under the rules applying in the Commission (Decision 2001/844), a **classified document** is one marked "EU restricted", "EU confidential", "EU secret" or "EU top secret". A document is classified if it contains information whose unauthorised disclosure:

- might harm the essential interests of the European Union or one of its Member States ("top secret" - exceptional harm, "secret" - serious harm, "confidential" - harm) ;
- might be prejudicial to the interests of the European Union or one of the Member States ("restricted").

Because of the information it contains such a document enjoys a special level of protection within the institution itself.

A document that is classified as at least "confidential", and falls into the area of protection of the public interest as regards:

- public security,
- defence and military matters,
- international relations,
- the financial, monetary or economic policy of the Community or a Member State,

is referred to as a "**sensitive document**" (*Article 9 of the Regulation*).

When an application for access relates to a sensitive document or another document classified under the Commission's security rules, it will be examined by officials with authority to read the document.

Any decision refusing access to all or part of a classified document must be justified with reference to the exceptions provided for in the Regulation (see question 21). If it transpires that access to the document requested cannot be refused on the basis of the exceptions, the official considering the request will ensure that the document is declassified before sending it to the applicant.

The agreement of the originating authority is required for granting access to a sensitive document (see question 22) (*Article 9 of the Regulation; Article 6 of the internal rules*).

27a. What is procedure for examining applications for access to committee documents?

Applications for access to documents produced by all types of committees, whether committees and working parties set up by the Commission or "committee procedure" committees or similar, should be treated like requests for documents produced by the Commission itself, not documents originating with third parties.

In the more specific case of "committee procedure" committee documents, under Article 7(3) of Council Decision 468/99 of 28 June 1999 the Commission sends the European Parliament copies of the following documents: agendas for committee meetings, results of voting and summary records, lists of the authorities and organisations represented and draft measures submitted to the committees for the implementation of instruments adopted by the codecision procedure. Similarly, under Article 7(5) of the same decision, the Commission is required to make public a register containing the references of all documents sent to the EP. In a declaration annexed to the decision, the Commission also undertook to make the documents sent to the EP accessible to the public as soon as the available resources permitted, with the exception of those considered to be confidential. In order to meet these obligations, the SG has

established a register (which lists the references of documents sent to the EP) and a “repository” (an Internet database which provides direct online public access to the text of the documents), which will be available on the Internet in Autumn 2003. The management of this register and the repository will be decentralised. Each DG must provide document references for inclusion in the register and decide which documents can be made directly accessible to the public online. For documents which are not directly accessible an application for access will have to be made; this will be handled in accordance with Regulation 1049/2001. To help the departments make use of these new instruments, the SG has prepared operational instructions which, once they have been finalised, will be put on the “comitology” Intranet site in French and English.

27b. *How should you deal with an application for access to a study financed by the Commission?*

Some of the studies carried out for the Commission are published. Publications for which a charge is made are available via the network of EUR-OP sales agents; free publications are available to the public through the relays and networks (such as the Info-Centres). As a rule, studies will also be available from the DG or department that commissioned them. Some studies will also be directly available on the Commission’s EUROPA website.

If the study has not been published it should be treated in the same way as any other internal Commission document. You are advised to include in the letter accompanying the study a special clause stating that the study was carried out by independent experts and that the Commission cannot be held responsible for its content (cf. model letter in annex).

28. *What if the document requested is the responsibility of several DGs or services?*

The lead DG is responsible for drafting the reply, in conjunction with the departments involved, and will organise any interdepartmental consultations that might be necessary.

29. *What if the application for access is unclear?*

If the application is imprecise you should ask the applicant to provide further details to help identify the documents requested. You have a duty to help the applicant in this respect, for example by providing information about how to use the public register of documents (for information about the document register see the next question).

The period for replying to an application only begins once you have sufficient information to process the request (*Article 6 of the Regulation; Article 2 of the internal rules*).

30. *How does document registration work in the Commission?*

As required by Article 11 of Regulation 1049/2001, in order to help citizens exercise their right of access to documents, the Commission made a document register accessible on the EUROPA site from 3 June 2002.

As a first priority the register covers legislative documents, as defined in Article 12(2) of the Regulation. In the first stage it contains SEC, COM and C documents issued after 1 January 2001. Its scope will gradually be extended. The fact that a document does not feature in the register does not mean that it cannot be requested and made public.

The register contains the title of the document (in the languages in which it is available), the document number and other useful references, an indication of the author and the date of creation or adoption.

A help page in all official languages explains how the public can access the document. If it has been published a link is provided to the full text in Eur-Lex. It is also planned in the future to create a link to the text of documents that have already been disclosed, as well as to the text of preparatory documents for proposals, legislative acts or communications after their adoption, once it is clear that none of the exceptions in Article 4 applies.

When the Commission receives a sensitive document from a third party it will obtain its agreement before entering the document in the register (for the handling of sensitive documents see question 27) (*Articles 9 and 11 of the Regulation; Article 8 of the internal rules*).

The register appears on the same website as other electronic information sources (http://europa.eu.int/comm/secretariat_general/sgc/acc_doc/index_en.htm#), including the register of the President's correspondence, the Pre-Lex database, agendas and ordinary minutes of Commission meetings once they have been adopted, and the Archisplus database (historical archives). The register of "committee procedure" documents will also be accessible from this site (see also question 27a).

31. *How should you deal with repetitive, unduly voluminous or unreasonable applications?*

The only means provided by Regulation No 1049/2001 are extending the deadline for a reply, asking the requester to provide more information, or consulting the applicant to try to find a compromise solution where a particularly large volume of material is requested (a very long document or a large number of documents) (*Article 6 of the Regulation*). A compromise solution might be to draft a summary that meets the applicant's needs.

If the application really does involve a lot of work and no compromise can be reached, the Commission may, in the interests of sound administration, invoke the principle of proportionality to justify a refusal, provided that the amount of work involved in processing the request would be excessive in relation to the interest served by disclosure. (See also question 23)

Repeated requests from the same applicant for the same document will be met only once.

If the same document is the subject of a large number of applications it might in some cases be worth publishing it or making it available at Info-Points.

STAGE 3: The reply to the initial application

32. *Who should sign the reply to an initial application?*

Applicants should be informed of the response to their requests by the Director-General or Head of the Service concerned, or by a Director within the SG, or by the official they have designated for this purpose. If the request concerns a document originating with or received by a Member's Private Office (cabinet), the reply may also be signed by the Chef de cabinet or member of the cabinet designated for the purpose.

If the application relates to a document concerning the activities of OLAF (referred to in Article 2(1) and(2) of Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing OLAF), the reply will be signed by the Director designated to perform this function in OLAF (*Article 3 of the internal rules*).

33. *What language should be used for replying to the application?*

The reply should be written in the language used by the applicant. A number of **model letters** are included in the Annex to this Guide and are available from the SG in all official languages of the Community. These model letters will serve as a guide for drafting replies.

You should also supply the requested document in the same language, if it is available. If it is not, you should take account of the applicant's preferences among the language versions that do exist.

34. *What happens if a DG or service intends to refuse access to a document?*

In the interests of consistency you should first **consult the official responsible** for document access in your DG and the SG, in order to check that the refusal is justified on the grounds of one of the exceptions provided for in the Regulation.

35. *What information is included in a letter refusing an application for access?*

Any decision refusing all or partial access must give the reason for refusal based on one of the exceptions explicitly provided for in the Regulation. It must not be a standard reply, but must show that the individual case has been assessed.

Any refusal, even a partial one, must also inform the applicant of his or her right to submit a confirmatory application to the Secretary-General of the Commission within 15 working days of receiving the reply (*Article 7 of the Regulation; Articles 2 and 3 of the internal rules*).

36. *Why do reasons have to be given for refusing access?*

This requirement serves two purposes: on the one hand it informs the applicants of the reasons for the measure and thus enables them to assess whether or not to exercise their right to submit a confirmatory application, and on the other it enables the Community courts to review the legality of the decision.

37. *What should you do after replying to an application for access?*

Replies to initial applications must be sent to the SG for information.

The SG is required by the Regulation to produce an annual statistical report on the applications for access registered by all Commission departments (*Article 17 of the Regulation*).

STAGE 4: Supplying the documents requested

38. *In what form are the documents made available?*

Documents are made available to the applicant either:

- in the form of a copy (if necessary in electronic form). Documents will be sent by post, fax or e-mail as requested; or
- via consultation on the spot.

If there is a large volume of material or if the documents are difficult to handle, the applicant may be invited to consult them on the spot. Consultation will be by appointment in the relevant Commission department or, if it is not equipped to receive visitors, in the Commission's Central Library in Brussels or Luxembourg. Documents can also be consulted in Commission Representations in the Member States or in the Commission's external Delegations in third countries.

The documents will be supplied in an existing language version and format (including electronically or in an alternative format such as Braille, large print or tape), taking the applicant's preference fully into account. Unpublished documents are not always available in all official Community languages and some old documents do not exist in electronic form (*Article 10 of the Regulation; Article 7 of the internal rules*).

39. *What are the charges and how are they invoiced?*

No charge is made if the documents are consulted on the spot, if the number of copies requested is no more than 20 A4 pages, or if the document(s) can be accessed directly in electronic form or via the register.

A **system of invoicing** may be applied to applications relating to documents of **over 20 pages**. The rate charged is €0.10 plus postage, i.e. the normal cost of photocopying. The invoicing system is optional. You are advised to invoice costs only in the case of applications for voluminous documents or repetitive requests. Departments can therefore decide whether or not to invoice costs on a **case by case basis**.

The charges for information supplied on **other media** (computer data, audio tapes, etc.) will be decided by the DGs and Services case by case, subject to the principle that charges must be reasonable (*Article 10 of the Regulation; Article 7 of the internal rules*).

If the DG or Service intends to invoice costs it must notify the applicant before sending the document (see model letter in the Annex). If the requester agrees to the charge the department will send a second letter, using the model in the annex. This covering letter must always specify the number of pages, to enable EUR-OP to calculate the charge. A copy of this letter must be sent immediately to EUR-OP to

enable it to produce the invoice and follow up the payment. The copy should be sent to Mr LANGLAIS (EUR-OP, Distribution Department). If necessary a document should be attached to the copy intended for EUR-OP setting out the various details required for billing:

- DG, department, official responsible for the file, administrative address, telephone number;
- requester's name and address for invoice;
- description of the documents sent, exact number of pages, date of dispatch;
- cost of post and packaging;
- list of people who should be sent a copy of the confirmation of dispatch of the invoice.

As noted earlier, published documents are not covered by the policy on public access and are governed by their own price system.

40. *Are applicants allowed to copy or sell documents they have received?*

Yes, applicants may copy documents they have received from the Commission, but not for commercial purposes, without prior consultation (*Article 16 of the Regulation*).

STAGE 5: Examining a confirmatory application

41. *What rights does the applicant have if the initial application is refused?*

In the event of a total or partial refusal the applicant may, within 15 working days of receiving the reply, send a confirmatory application to the Secretary-General, asking the Commission to reconsider its position. The applicant may also make a confirmatory application in the absence of a reply within the prescribed time limit.

Applicants must be informed of their rights in the initial reply (see model letters in the Annex) (*Article 7 of the Regulation*).

42. *Who deals with confirmatory applications?*

Power to take decisions on confirmatory applications is delegated to the Secretary-General, except where the confirmatory application concerns documents relating to the activities of OLAF (referred to in Article 2(1) and(2) of Decision 1999/352/EC, ECSC, Euratom of 28 April 1999) when decision-making is delegated to the Director of OLAF.

The DG or Service that handled the initial applications will help the SG to prepare the decision.

The decision is taken by the Secretary-General or the Director of OLAF with the agreement of the Legal Service (*Article 4 of the internal rules*).

If the Legal Service does not agree, or if there is disagreement on the action to be taken in response to a confirmatory application relating to a document held by a Member of the Commission or a member of his/her cabinet, the matter will be referred to the full Commission.

43. What is the normal time limit for replying to a confirmatory application?

Confirmatory applications must be dealt with within 15 working days of their registration (for a definition of "working days" see question 16) (*Article 8 of the Regulation; Article 2 of the internal rules*).

44. Can this limit be extended?

In exceptional circumstances, for example when an application relates to a very long document or a very large number of documents, the prescribed time limit may be extended by 15 working days. The applicant is then informed of the extension of the time limit in a holding letter explaining the reasons for the extension (*Article 8 of the Regulation; Article 2 of the internal rules*) (see the model letters at the end of this Guide).

Examples of reasons for extending the time limit for replying:

- the number of documents requested / the volume of material requested;
- the need to consult other Commission departments;
- the need to consult a third party author;
- the complexity of the application (e.g. partial access);
- difficulty in finding the document requested (e.g. an old document), etc.

45. What happens if the Commission fails to reply to a confirmatory application?

Failure by the Commission to reply within the prescribed time limit is equivalent to a negative reply (*Article 8 of the Regulation*).

STAGE 6: Appealing against a refusal to grant a confirmatory application

46. What rights do applicants have if their confirmatory application is refused?

If access is refused following a confirmatory application, the Commission must inform the applicant in writing of his or her right to bring an action in the Court of First Instance (CFI) or to complain to the European Ombudsman (according to the conditions laid down in Articles 230 and 195 of the EC Treaty respectively). Citizens of non-member countries who are not resident in a Member State and legal persons that do not have their registered office in one of the Member States will be informed only of the possibility of an action in the CFI.

Applicants have the same possibilities of redress in the event of a failure to reply within the prescribed time limit (*Article 8 of the Regulation; Articles 1 et 4 of the internal rules*).

Further information

Within your DG or Service: see list of officials responsible for access to documents in the Annex.

In the SG : Unité SG.E.3
 Marc MAES (tél. : 90652)
 Margarida BALSEIRO (tél.: 53154)
 Olga KURPISZ (tél. : 51421)

Website "Access to Commission internal documents":
http://europa.eu.int/comm/secretariat_general/sgc/acc_doc/index_en.htm

ANNEXES

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
Commission Decision C(2001) 3714 of 5 December 2001 amending its Rules of Procedure

SEC(97)1293

SEC(2003)260/3

PRACTICAL EXAMPLES OF APPLYING THE EXCEPTIONS

N.B.

To help you to apply the exceptions provided for in Article 4 of Regulation No 1049/2001, a number of practical examples are given below.

It goes without saying that each application should be examined on its merits and that no document is excluded *per se* from the right of access. The application of a given exception to a given type or category of document is therefore never automatic. Moreover, in the case of the exceptions referred to in Article 4(2) and (3), an overriding public interest may warrant the disclosure of the document in question. Finally, the possibility of granting partial access should always be considered.

Practical cases

Article 4(1)(a)

Examples:

Documents containing information about plans to combat terrorism at Community or Member-State level

Documents containing information about the positions the Commission intends to adopt at GATT multilateral negotiations

Article 4(1)(b)

Examples:

Officials' personal files, including their medical records

Consultants' CVs

This exception to the right of access should be interpreted in accordance with Regulation No 45/2001 on the protection of personal data

Article 4(2), first indent

Example:

Information on costs and tenders (including other commercial and industrial secrets) provided by tenderers in connection with an invitation to tender

Article 4(2), second indent

Examples:

Opinions given by the Legal Service on a draft legislative proposal

Defence pleas

Article 4(2), third indent

Examples:

Audit report drawn up by a Commission department following an alleged fraud

Documents drawn up by a department or received from a Member State as part of an ongoing investigation into a possible failure to comply with Community law

Article 4(3), first indent

Example:

Successive versions of a draft legislative proposal and the various contributions from third parties, before adoption of the instrument by the institution

Annual activity reports before the adoption of the summary report by the Commission

Article 4(3), second indent

Examples:

Special Commission Minutes (which contain the Members' individual views expressed during the discussions)

Opinions given as part of interservice consultations

Briefing notes for Members of the Commission

Individual opinions of members of a selection board or assessors in a tendering procedure

Public access to documents relating to infringement procedures

In the light of the case law of the Court of First Instance, and in particular the judgment of 11 December 2001 in Case T-191/99 *Petrie v Commission*, on 5 March the Commission adopted guidelines for dealing with applications for access to documents produced as part of an infringement procedure under Article 226 EC (SEC(2002)260/3).

The aim of these guidelines is to meet the need for consistency, by ensuring that all Commission departments handle requests for similar documents in the same way, while continuing to observe the basic principle that every request should be examined on a case-by-case basis.

In particular, these guidelines take account of the nature of the document in question and the point at which it is requested. The exception specifically provided for in Article 4 of Regulation No 1049/2001 to protect the purpose of investigations is meant to apply during the pre-litigation stage or while the case is before the Court. Once a case has been closed or withdrawn, or a judgment has been handed down under Article 226 of the EC Treaty, this exception will, in principle, cease to apply. A "presumption of accessibility" applies but this can be overturned in certain cases. In any event, the possibility that other exceptions provided for in Article 4 of Regulation No 1049/2001 might apply should always be examined.

ADDRESSES

Addresses to which applications for access to Commission documents can be sent

Secretariat-General

European Commission

Unit SG.E.3 "Transparency, Relations with Stakeholders and External Organisations"

B-1049 BRUSSELS

Fax: 00/32/2/296.84.98

E-mail address: sg-acc-doc@cec.eu.int

For all other Directorates-General:

European Commission

B-1049 BRUSSELS

Address of the Historical Archives Department

Secretariat-General

European Commission

Unit SG.B.3 Simplification and modernisation of archiving systems and historical archives

B-1049 BRUSSELS

Fax: 61095

Address of the Sales, Promotion and Customer Support Service of EUR-OP

2, Rue Mercier

L-2985 LUXEMBOURG

Fax: 00/352/2929.4.27.63

EUR-OP sales agents (http://publications.eu.int/general/fr/salesagents_fr.htm)

Other addresses where free publications can be obtained

Addresses of Commission Representations in the Member States

(http://europa.eu.int/comm/represent_fr.htm)

Addresses of Commission Delegations in non-member countries

(http://europa.eu.int/comm/external_relations/repedel/)

For a list of Info-Points Europe, Rural Information Carrefours and other information relays and networks within the European Union please contact:

Directorate-General for Press

European Commission

Unit PRESS.A.2

B-1049 BRUSSELS

Europe Direct

Telephone numbers: http://europa.eu.int/europedirect/phones_en.html

E-mail address: mail@europe-direct.cec.eu.int

LIST OF OFFICIALS RESPONSIBLE FOR ACCESS TO DOCUMENTS
IN EACH DG/DEPARTMENT

DG	NOM	ADRESSE	TEL	FAX
SJ	SJ ACCES DOCS			
	Mme COSTA DE OLIVEIRA	BERL 01/41	95340	52493
	Cc: Mme FORNELL MAROTO	BERL 01/17	32132	52493
	Mme ITURRITZA	BERL 01/107	53658	94202
COMM	Mme OLESEN COMM ACCES DOCUMENTS	BERL 5/346	68618	
BEPA	BEPA ARCHIVES		60392	52305
ECFIN	ECFIN ACC. DOCS			69428
ENTR	Mme FUESSL	BRE2 5/156	94211	91926
	Mr. WRAGG ENTR ACCES DOCUMENTS	BRE2 5/222	60126	91926
COMP	Mme DUSSART-LEFRET	J-70 04/226	61223	55437
	Mme KARAVA COMP ACCES DOCS	J-70 04/220	57172	
EMPL	EMPL – ARCHIVES	J-37 00/28	59294	94786
	EMPL - CAD Mme PRETZENBACHER	J-27 08/77	53424	69315
AGRI	AGRI ACC. DOCS			91761
	(Mme SACK-RUER)	L-130 04/157	54862	91761
TREN	TREN ACC. DOCS			56118
	M. MURPHY (demandes d'info « boîte TREN INFO »)	DM-28 08/48	62227	56118

DG	NOM	ADRESSE	TEL	FAX
ENV	ENV ACC. DOCS Mme MULLER M. LAWRENCE	BU-5 06/152 BU-5 04/041	54904 53537	91068 91068
RTD	RTD ACC. DOCS Mme. DELBEKE	SDME 00/046	65856	67028
JRC	Mme VAN OS	CCR/ISPRA TP 650	*80936/5214	*80936/5431
INFSO	INFSO ACC. DOCS			93775
FISH	FISH ACC. DOCS Mme GUERRERO	J-99 04/46	50157	93040
MARKT	MARKT DOSSIERS ACCES Mr. BOULOUQUE	C-107 06/56	50814	92106
REGIO	Mme ZORBALA consultations interservices REGIO cc : REGIO ACCESS DOC	CSM2 02/29	59861	65418
TAXUD	Mr. VERGNOLLE Mme CORRERA TAXUD ACCESS TO DOC.	MO-59 07/27 MO-59 07/15	63332/61312 61675	50709
EAC	M. HERDIES Mme FACCHINI EAC ACCES DOCUMENTS	MADO 24/53 MADO 24/67	61529 52602	98203
SANCO	Mr. VITALI Mme BENASSI Mme GARREAUD SANCO ACCESS TO DOC.	B-232 01/35 B-232 01/115 B-232 1/63	67992 66094 58526	63279
JLS	JLS ACCES DOCUMENTS Mr. NUSS Copie : Mme DE MOL	LX-46 07/81 LX-46 07/86	64134 57872	98054

DG	NOM	ADRESSE	TEL	FAX
RELEX	Mme RUIZ SERRANO Mr. HEETMEYER	CHAR 15/56 CHAR 15/43	98708 65484	68093 50615
TRADE	TRADE ACC. DOCS Mr. DE LAROUSSILHE Mr. VIALA	CHAR 07/120 CHAR 07/137	68502 81403	69854
DEV	DEV A5 FMB M. DEBO	SC15 00/019A	92143	
ELARG	Mme MANNAERTS	CHAR 04/100	55168	91777
AIDCO	AIDCO COURRIER DE LA COMMISSION Mr. CRISTÓBAL	L-41 7/151	56849	61101/98635
ECHO	ECHO ACC. DOCS Mme TRAUTMAN Mr. DAMINI	AN88 4/044 AN88 4/021	57423 67536	54578 54442
ESTAT	Mr. BAUTIER	BECH A4/112	33556	35349
ADMIN	Mme. GIDROL ADMIN ACCESS TO DOC.	SC-11 08/59	50211	52424
DIGIT	DIGIT R1 Mr. CLAVERIE	IMCO 05/14	62654	59432
OIB	Mr. PELEMAN	L-86 02/52	52717	64310
OIL	Mr. SEGUINOT	JMO B3/073	38190	33789
EPSO	EPSO ACC. DOCS Mme WALRAVENS- HOFMANS Mr. HALSKOV	C-80 05/09 C-80 05/66	59431 62451	
PMO	PMO ACCES DOCUMENTS Mme CABOUCTZIS Mme BOTTON Mme VANDENHENDE M. TZIRANI	SC27 1/40 SC27 1/49 SC27 01/41 SC27 1/46	59572 99480 92359 58482	

DG	NOM	ADRESSE	TEL	FAX
BUDG	M. PARLANTE BUDG ACCES DOCUMENTS	BRE-2 14/497	52346	59585
IAS	IAS LIST 02 ACCESS (Julien LOIC) Mme LEVY	B--7 02/33	94002	54140 4140
OLAF	OLAF ACCESS DOC. c.c. : Mme LAUDATI	J-30 13/54	67727	98102
SCIC	scic-euroscic@cec.eu.int Mr. ANDERSEN	DM-24 02/49	54024	53071
DGT	DGT ACC. DOCS Mme VAN RIJ-BRIZZI	G--6 11/025	90191	86251
OPOCE	Mme BOCK	MER 02/291	42438	42758

Working Party on Information Composition of delegations

13.06.2006

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<u>BELGIUM</u> Rd Point Schuman 6 1040 Brussels	Ms Delphine COLARD, Spokesperson	Access	02 233 03 01 0473 74 12 94	02 231 10 75	delphine.colard@diplobel.fed.be belrep@diplobel.fed.be
	Ms Jacqueline DE HANSCUTTER, Expert/Attaché, Coordinator, Division Communication "Europe", Directorate General European Affairs and Coordination (DGE), the Federal Public Service (FPS), Ministry of Foreign Affairs, Foreign Trade and Development Cooperation	Info	02 501 85 01	02 501 83 54	jacqueline.dehanscutter@diplobel.fed.be
	Ms Sabine PAUQUAY, SPF Chancellerie du Premier Ministre, DG Communication externe	Info	02 287 41 25		Sabine.Pauquay@belgium.fed.be
<u>CZECH REPUBLIC</u> Rue Caroly 15 1050 Brussels	Mr Jan VYTOPIL, Spokesperson, Counsellor, Press and PR Affairs	Access + Info	02 213 01 89 0475 33 02 52	02 213 01 84	jan_vytopil@mzv.cz
	Ms Ivana PETRU, assistant to Mr Vytopil	Access + Info			ivana_petru@mzv.cz
	Ms Monika DOBIASOVA, Internal Market and Sectoral Policies, MFA	Access	00 420 224 182 875	00 420 224 182 043	monika_dobiasova@mzv.cz

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	Ms Pavlína PETŘÍČKOVÁ, Office of the Government of the Czech Republic, Department of Information and European Affairs	Info	00 420 221 774 283	00 420 221 774 289	petrickova.pavlina@vlada.cz
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	Mr Theis JENSEN, Assistant/stagiaire	Access + Info	02 233 08 47	02 233 08 92	Thejen@um.dk
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	Mr Ulrich KLÖCKNER, Head of Public Relations Division K04, Ministry of Foreign Affairs	Info	00 49 30 5000 28 59	00 49 30 5000 5 28 59	ulrich.kloeckner@diplo.de K-I@diplo.de
	Mr Thomas PRINZ, Counsellor,				thomas.prinz@diplo.de

Delegation Address Perm. Rep.	Member Other participants	Docs (*)	Tel./GSM	Fax	e-mail
	Deputy Head Public Relations Division (EU) K05, Ministry of Foreign Affairs Ms Waltraud Jahn-Hommer, Head of the Public Relations Division for European Issues, Press and Information Service of the Federal Government	Info Access + Info	00 49 30 5000 79 91 00 49 1888 272 42 42	00 49 30 5000 5 79 91 00 49 0162 13 67 649 00 49 1888 272 31 48	Waltraud.Jahn- Hommer@bpa.bund.de 312@bpa.bund.de (info)
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Delegation Address Perm. Rep.	Member Other participants	Docs (*)	Tel./GSM	Fax	e-mail
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	Ms Ana OLIVEIRA E SILVA, Legal Adviser	Access + Info	02.286 42 31 0479 87 06 10	02 231 00 26	aos@reper-portugal.be
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- (*) Access = delegate requested to receive only documents on transparency/access to documents matters
Info = delegate requested to receive only documents relating to information policy matters
Access + Info = delegate requested to receive documents concerning both transparency/access to documents and information policy matters

_____ -

MODEL LETTERS

1. Acknowledgement of receipt
2. Holding reply
3. Initial application too vague
4. YES - Sending a document of 20 pages or less
5. YES - Sending a document of more than 20 pages
6. If the requester replies that he wishes to proceed with his application (invoicing)
7. YES - consultation on the spot.
8. NO - document covered by one of the exceptions
9. Consultation of a third-party author
10. Consultation of a Member State in the case of a document sent before 3 December 2001
11. Consultation of a Member State in application of Article 4(5) of the Regulation
12. Disclosure contrary to the recommendation of the author

ACKNOWLEDGEMENT OF RECEIPT
to be sent in reply to all applications for access to a Commission document

Dear Mr/Mrs/Ms

Thank you for your letter/ e-mail/ fax of XXX, which we received on XXX, applying for access to documents.

Under the terms of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, you will receive a reply within 15 working days.

Yours sincerely,

HOLDING REPLY - INITIAL APPLICATION

Dear Mr/Mrs/Ms

Thank you for your letter/ e-mail/ fax of XXX, which we received on XXX, in which you apply for access to documents in accordance with Regulation (EC) No 1049/2001³ regarding public access to European Parliament, Council and Commission documents.

Your application will be dealt with as quickly as possible. However, in view of the number of documents requested (or other reason), we will have to extend the deadline laid down in the Regulation by 15 working days. Please accept our apologies.

Yours sincerely,

³ [OJ L 145 of 31 May 2001, p. 43.](#)

INITIAL APPLICATION TOO VAGUE

Dear Mr/Mrs/Ms,

Thank you for your letter/ e-mail/ fax of, which we received on, in which you apply for access to documents in accordance with Regulation (EC) No 1049/2001⁴ regarding public access to European Parliament, Council and Commission documents.

Unfortunately, as your request did not include sufficient information and/or the references you gave did not produce any result, we were unable to identify the document(s) in question. I would therefore be grateful if you could provide us with more detailed information.

Yours sincerely,

⁴ OJ L 145 of 31 May 2001, p. 43.

SENDING A DOCUMENT OF 20 PAGES OR LESS
or more than 20 pages if the DG or department in question
does not intend to levy a charge

Dear Mr/Mrs/Ms

Thank you for your letter/ e-mail/ fax of XXX, which we received on XXX, in which you apply for access to documents in accordance with Regulation (EC) No 1049/2001⁵ regarding public access to European Parliament, Council and Commission documents.

Please find enclosed a copy of the document(s) which I hope you will find useful. I must remind you, however, that it/they may not be reproduced or disseminated for commercial purposes without the Commission's prior authorisation.⁶

Yours sincerely,

⁵ OJ L 145 of 31 May 2001, p. 43.

⁶ In the case of a study, use the wording "I would point out that this study was performed by independent experts, and the European Commission cannot be held responsible in any way for its contents. I would also draw your attention to the fact that it may not under any circumstances be reproduced or disseminated for commercial purposes, in its entirety or in part, without first consulting our services." In the case of a document that has not been finalised and is still to be adopted by the Commission, you should explain the status of the document and state that it does not in any way prejudice the Commission's final decision.

SENDING A DOCUMENT OF MORE THAN 20 PAGES
for which the DG or department intends to make a charge

Dear Mr/Mrs/Ms

Thank you for your letter/ e-mail/ fax of XXX, which we received on XXX, in which you apply for access to documents in accordance with Regulation (EC) No 1049/2001⁷ regarding public access to European Parliament, Council and Commission documents.

I would draw your attention to the fact that you will be asked to pay €0.10 per page plus €... postage for this ... page copy in order to cover the costs of reproduction. Please would you confirm that you wish to proceed with your application, by letter or by fax (32/2/29,), as soon as possible.

Yours sincerely,

⁷ OJ L 145 of 31 May 2001, p. 43.

IF THE REQUESTER REPLIES THAT HE WISHES TO PROCEED WITH HIS APPLICATION

Dear Mr/Mrs/Ms,

Thank you for your letter/ e-mail/ fax of, which we received on, in which you apply for access to documents in accordance with Regulation (EC) No 1049/2001⁸ regarding public access to European Parliament, Council and Commission documents.

Please find enclosed a copy of the document(s) which I hope you will find useful. You will shortly be receiving an invoice, with an indication of the payment arrangements, for the delivery of this copy of ... pages. I would remind you that the document(s) may not be copied for commercial purposes without prior permission from the Commission.⁹

Yours sincerely,

Copy: Mr LANGLAIS (EUR-OP, Distribution Department)

⁸ OJ L 145 of 31 May 2001, p. 43.

⁹ In the case of a study, use the wording "I would point out that this study was performed by independent experts, and the European Commission cannot be held responsible in any way for its contents. I would also draw your attention to the fact that it may not under any circumstances be reproduced or disseminated for commercial purposes, in its entirety or in part, without first consulting our services." In the case of a document that has not been finalised and is still to be adopted by the Commission, you should explain the status of the document and state that it does not in any way prejudice the Commission's final decision.

CONSULTATION ON THE SPOT

Dear Mr/Mrs/Ms,

Thank you for your letter/ e-mail/ fax of, which we received on, in which you apply for access to documents in accordance with Regulation (EC) No 1049/2001¹⁰ regarding public access to European Parliament, Council and Commission documents.

A copy of the document(s) will be made available for you to consult at xx [time] on xx/xx/xx [date] at the following address:

(Address of Commission building in Brussels or Luxembourg, the Commission's Central Library in Brussels or Luxembourg, a Commission office in a Member State, or a delegation in a third country).

Please bring this letter with you when you come.

Yours sincerely,

¹⁰ [OJ L 145 of 31 May 2001, p. 43.](#)

DOCUMENT COVERED BY ONE OF THE EXCEPTIONS

Dear Mr/Mrs/Ms,

Thank you for your letter/ e-mail/ fax of, which we received on, in which you apply for access to documents in accordance with Regulation (EC) No 1049/2001¹¹ regarding public access to European Parliament, Council and Commission documents.

I regret to have to inform you that the document(s) you require come(s) under the system of exceptions provided for in the document access policy, and that we cannot therefore provide them for you.

The exception that applies to the document(s) you requested is ... (exception listed in Article 4 of Regulation No 1049/2001, explanations on the nature of the document requested depending on the exception in question, etc.).

However, if you wish to appeal against this decision, you should write to the Commission Secretary-General at the address below, repeating your initial request. You have fifteen working days from receipt of this letter in which to appeal. Beyond this deadline, your initial request will be considered withdrawn.

The Secretary-General will inform you of the outcome of this re-examination of your request within fifteen working days of receipt of your request, either by granting you access to the document(s) or by confirming the refusal. In the latter case, he will also inform you of any further appeal routes you may take.

All correspondence must be sent to:

The Secretary-General
European Commission
B-1049 BRUSSELS

Yours sincerely,

¹¹ [OJ L 145 of 31 May 2001, p. 43.](#)

CONSULTATION OF A THIRD PARTY IN CASE OF DOUBT AS TO THE APPLICABILITY
OF AN EXCEPTION
[first example]

Dear Mr/Mrs/Ms

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 has been in force since 30 May 2001.

Citizens of the Union, natural persons (whether or not they live in a Member State) and legal persons (whether or not established in a Member State) now have a right of access to the documents of an institution.

Regulation No 1049/2001 applies to all documents held by an institution, i.e. documents which it is has produced or received, in all areas of EU activity.

The Commission has received an application for access to (a) document(s) of which you are the author, namely XXX.

The Commission is unsure as to the applicability of the exception XX, provided for by Article 4 (X) of the Regulation, to this/these document(s) (please find enclosed Article 4 to the Regulation). Under the terms of Article 4(4) of this Regulation and Commission Decision 2001/937/EC of 5 December 2001, the Commission must consult the third-party author in cases of doubt. We should therefore welcome your opinion as to whether this exception applies.

To enable the Commission to reply to the application for access within the 15 working-day time-limit laid down in Regulation No 1049/2001, we would be grateful if you would let us know as soon as possible, and in any case within five working days of receiving this letter, whether or not you are in favour of disclosure by the Commission of the document(s) requested.

If we have not received your reply within the stated period, the Commission will decide according to the system of exceptions provided for in Regulation No 1049/2001, taking account of your legitimate interests on the basis of the information at our disposal.

In view of the very short period of time the Commission is allowed under Regulation No 1049/2001 in which to respond, we would be grateful if you would reply, if possible by fax or e-mail, to:

NAME, FAX NUMBER

or

E-MAIL ADDRESS

Yours sincerely,

CONSULTATION OF A MEMBER STATE IN THE CASE OF A DOCUMENT SENT TO THE
COMMISSION BEFORE THE DATE ON WHICH THE REGULATION ENTERED INTO FORCE
(3 DECEMBER 2001) WHERE THE DG/DEPARTMENT INTENDS TO GRANT ACCESS TO THE
DOCUMENT
[second example]

Dear Mr/Mrs/Ms

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 has been in force since 30 May 2001.

Citizens of the Union, natural persons (whether or not they live in a Member State) and legal persons (whether or not established in a Member State) now have a right of access to the documents of an institution.

Regulation No 1049/2001 applies to all documents held by an institution, i.e. documents which it is has produced or received, in all areas of EU activity.

The Commission has received an application for access to (a) document(s) of which you are the author, namely XXX.

The document(s) requested was/were sent to the Commission before the date on which Regulation No 1049/2001 came into force (i.e. 3 December 2001). Under Commission Decision 2001/937/EC of 5 December 2001, the Commission must consult the originating Member State if it intends to grant access to a document sent to it before 3 December 2001. We would therefore like to know whether or not your authorities are in favour of disclosure by the Commission of the document(s) concerned.

To enable the Commission to reply to the application for access within the 15 working-day time-limit laid down in Regulation No 1049/2001, please would you notify us of the opinion of your authorities as soon as possible, and in any case within five working days of receiving this letter.

If we have not received your reply within the stated period, the Commission will decide according to the system of exceptions provided for in Regulation No 1049/2001, taking account of the legitimate interests of your authorities on the basis of the information at its disposal.

In view of the very short period of time the Commission is allowed under Regulation 1049/2001 in which to respond, we would be grateful if you would reply, if possible by fax or e-mail, to:

NAME, FAX NUMBER

or

E-MAIL ADDRESS

Yours sincerely,

CONSULTATION OF A MEMBER STATE WHERE THE MEMBER STATE HAS REQUESTED
NON-DISCLOSURE
(Article 4(5) of Regulation 1049/2001) WHERE THE DG/DEPARTMENT INTENDS TO GRANT
ACCESS TO THE DOCUMENT
[third example]

Dear Mr/Mrs/Ms

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 has been in force since 30 May 2001.

Under Article 4(5) of Regulation 1049/2001, a Member State may ask an institution not to disclose a document originating from that Member State without its prior agreement.

The Commission has received an application for access to (a) document(s) which your authorities have asked it not to disclose without their prior agreement, namely XXX. Under Commission Decision 2001/937/EC of 5 December 2001, the Commission must consult the originating Member State in such cases.

To enable the Commission to reply to the application for access within the 15 working-day time-limit laid down in Regulation No 1049/2001, we would therefore be grateful if you would let us know as soon as possible, and in any case within five working days of receiving this letter, if your authorities are opposed to disclosure by the Commission of the document(s) concerned.

If we have not received your reply within the stated period, the Commission will decide according to the system of exceptions provided for in Regulation No 1049/2001, taking account of the legitimate interests of your authorities on the basis of the information at its disposal.

In view of the very short period of time the Commission is allowed under Regulation No 1049/2001 in which to respond, we would be grateful if you would reply, if possible by fax or e-mail, to:

NAME, FAX NUMBER

or

E-MAIL ADDRESS

Yours sincerely,

INTENTION TO GIVE ACCESS TO A DOCUMENT AGAINST THE EXPLICIT OPINION OF
THE AUTHOR
(Article 5(6) of Commission Decision 2001/937/EC of 5 December 2001)

Dear Mr/Mrs/Ms

On XX (DATE) we consulted you on an application for access to (a) document(s) of which you are the author, namely XX (THE DOCUMENT(S)).

In reply, you expressed an unfavourable opinion on the disclosure of your document(s), which you felt was/were covered by an exception provided for by 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.

Following a detailed examination, however, the Commission intends to grant access to this/these document(s) after a period of ten working days, i.e. on XX (DATE).

In this regard we would draw your attention to the possibilities for appeal provided for in Article 230 of the EC Treaty.

Yours sincerely,