



EUROPEAN  
COMMISSION

Brussels, 8.10.2014  
COM(2014) 619 final

## **REPORT FROM THE COMMISSION**

**on the application in 2013 of Regulation (EC) No 1049/2001 regarding public access to  
European Parliament, Council and Commission documents**

This report, drawn up pursuant to Article 17(1) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>1</sup>, covers the year 2013<sup>2</sup> and is based on statistical data which are summarised in the annex.

These statistics reflect the number of applications and not the number of documents requested. In practice, applications may cover a single document as well as entire files concerning a specific procedure containing thousands of documents. Applications for access to documents which were already publicly accessible at the time of the request are not included.

In 84% of cases at the initial stage the requested documents were disclosed. At the confirmatory stage, either full or partial access was granted in 42% of cases.

1. Registers and Internet Sites

- 1.1. In 2013, 20,108 new documents were added to the register of Commission documents (see annex – table 1).
- 1.2. In 2013, the Commission's public register covered the following documents: COM, SEC, C, JOIN, SWD, OJ and PV series. No sensitive documents were created or received by the Commission in 2013, that would fall within one of these categories of documents.
- 1.3. The table below shows the statistics for 2013 on consultation of the Access to Documents website on EUROPA<sup>3</sup>.

	Unique visitors	Visits	Pages viewed
Total	34,178	40,175	71,152
Monthly average	2,848	3,348	5,929

2. Cooperation with the other Institutions subject to the Regulation

The three institutions (European Parliament, Council and Commission) held regular meetings at administrative level to share experience, develop best practices and ensure a consistent application of the Regulation.

3. Analysis of Access Applications

- 3.1. In 2013, the flow of access requests at the **initial stage** increased in terms of the number of applications (6,525 in 2013 in comparison with 6,014 in 2012). The number of replies based on Regulation 1049/2001 was 5,906 in 2013 in comparison with 5,274 in 2012.

<sup>1</sup> OJ L 145, 31.5.2001, p. 43

<sup>2</sup> Statistics presented in this Report are based on figures encoded in the GESTDEM application as of 17 June 2014.

<sup>3</sup> [http://ec.europa.eu/transparency/access\\_documents/index\\_en.htm](http://ec.europa.eu/transparency/access_documents/index_en.htm)

- 3.2. As regards the **confirmatory stage**, the number of applications received slightly increased by 3% (236 new confirmatory applications in 2013 against 229 in 2012). 252 cases were closed in 2013 in comparison with 202 in 2012. This constitutes a significant increase of 25%. (See annex – table 5).
- 3.3. In 2013, as in 2012, the Secretariat General and Directorate-General for Health and Consumers received the highest number of initial requests (13.9%<sup>4</sup> and 8.3% of the total respectively), followed by the Directorate-General for Competition with 5.2% of initial applications and the Directorate-General Environment with 5.1%. Requests for documents from Directorate-General for Taxation and Customs Union (which ranked first in 2011) increased, whereas the demand for documents held by the Directorate-General for Competition decreased.
- 3.4. The academic world proved once again to be the most active category of applicants, accounting for 22.1% of initial applications (as opposed to 22.7% in 2012). It was followed by civil society (interest groups, NGOs) with 16.6% (as opposed to 10.3% in 2012) and law firms with 14.5% (as opposed to 13.6% in 2012) of the total number of applications. For 25.3% of the applications, the socio-professional profile of the applicants is undefined. This represents a drop from 33.8% in 2012. (See annex – table 8).
- 3.5. The geographical breakdown of initial applications also shows similarities with previous years. The largest proportion of applications originated from Belgium (24.2%). Aside from Belgium and Germany (13%) none of the Member States, exceeded 10% of applications. These two countries are followed by the UK, France, Spain and Italy. ( See annex – table 9).
4. Application of Exceptions to the Right of Access
- 4.1. In 2013, the proportion of applications that were fully refused at the initial stage decreased in comparison with the previous year (14.5% in 2013 against 17% in 2012). Full disclosure has been given in almost four out of every five cases (73.5% against 74.5% in 2012) whereas the percentage of partially disclosed documents increased in comparison to the previous years to reach 10.7% (in comparison with 8.6% in 2012). (See annex – table 3).
- 4.2. The number of cases where, following a confirmatory application, the Commission reversed the position taken by its services by fully disclosing previously refused documents, slightly increased (20.1% against 18.8% in 2012). In addition, there was a slight decrease in cases where a refusal was fully confirmed and an increase in the number of cases where wider access was granted following a confirmatory application. (See annex – table 6).
- 4.3. The frequency of invoking the protection of the Commission's decision-making process (Article 4(3)) as ground for refusal at the initial stage, in relation to all invoked exceptions, slightly increased in comparison with the

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<sup>4</sup>

Percentages in the narrative part of the Report are rounded to the closest decimal

previous year (27.1% against 25.2% in 2012). It was the most frequently invoked exception, ahead of the exception aimed at protecting the purpose of inspections, investigations and audits (third indent of Article 4(2)), which accounted for 23.6% of the invoked exceptions (against 25.3% in 2012). (See annex – table 4).

4.4. The proportion of decisions invoking the protection of commercial interests as an exception remained fairly stable (16.2% against 16.9% in 2012). On the other hand, the frequency of using the exception based on the protection of international relations increased (6.2% against 3.6% in 2012). (See annex – table 4).

4.5. The most frequently invoked ground for confirming a refusal of access was, as in previous years, the protection of the purpose of investigations (third indent of Article 4(2)), (36.9% compared with 45.1% in 2012). (See annex – table 7)

- The proportion of decisions invoking the protection of the Commission's decision-making process as an exception was 16.1% (an increase in comparison with 2012). There was an increase in the frequency of decisions invoking the on-going decision-making process (10.6% against 6.5% in 2012). There was on the other hand a decrease concerning opinions for internal use where the decision had already been taken (5.6% in comparison with 9.2% in 2012).
- A significant increase is to be noted as regards the proportion of decisions invoking the protection of privacy and integrity of individuals (16.2% against 10.5% in 2012). The protection of commercial interests was invoked slightly more frequently than in the previous year (12% compared with 11.8% in 2012). As regards the exception based on the protection of court proceedings and legal advice, there was a decrease from 7.9% in 2012 to 6.9% in 2013.

## 5. Complaints to the European Ombudsman

5.1. In 2013 the Ombudsman closed the following 15 complaints against the Commission's handling of requests for access to documents:<sup>5</sup>

### **6 cases closed with a critical and/or a further remark:**

- 2335/2008/(VIK)CK;
- 2781/2008/(TS)FOR;
- 1817/2010/(DK)RA;
- 277/2012/RA;
- 1111/2012/AN;
- 1108/2012/RT

### **9 cases closed without further action:**

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<sup>5</sup> For details on each case refer to <http://www.ombudsman.europa.eu/en/cases/home.faces>

- 1947/2010/PB;
- 2207/2010/PB;
- 422/2011/AN;
- 772/2012/(KM)PMC;
- 1454/2012/ANA;
- 1598/2012/(KM)PMC;
- 1750/2012/(GG)BEH;
- 375/2013/ANA;
- 1242/2013/RA

5.2. In the course of the year the Ombudsman opened 22 new inquiries where access to documents was either the main or a subsidiary part of the complaint.

## 6. Judicial Review

6.1. As in previous years, significant new case law was delivered in 2013.

6.2. The Court of Justice handed down one important judgment on appeal in the joined cases C-514/11 P - LPN and Finland v Commission and C-605/11 P - Finland v Commission. This judgment concerns environmental policy.

6.3. The Court of Justice issued one order rejecting the appeal lodged by the Commission against the President of the General Court's order to prevent the Commission from publishing a more complete non confidential version of the Commission's Decision C (2008) 6815 final of 12 November 2008 relating to a proceeding pursuant to Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39.125 – Car glass).

6.4. As for the General Court, it has handed down 7 judgments related to the right of access to documents:

- T-392/07, *Strack v Commission*, judgment of 15.01.2013
- T-301/10, *Sophie In 't Veld v Commission*, judgment of 19.03.2013
- T-93/11, *Stichting Corporate Europe Observatory v Commission*, judgment of 07.06.2013
- T-111/11, *ClientEarth v Commission*, judgment of 13.09.2013
- T-380/08, *the Netherlands v Commission*, judgment of 13.09.2013
- T-545/11, *Stichting Greenpeace Nederland and PAN Europe v Commission*, judgment of 08.10.2013
- T-561/12, *Beninca v Commission*, judgment of 25.10.2013

- 6.5. In one case the Court ordered its removal from the register following the withdrawal by the applicant: T-498/12, *Koinopraxia Touristiki Loutrakiou v Commission*
- 6.6. In the following two cases, the Court found that there was no need to adjudicate:
  - T-403/05 RENV, My Travel v Commission
  - T-56/13, ClientEarth and Stichting BirdLife Europe v Commission
- 6.7. 10 new cases were brought before the General Court against Commission decisions under Regulation (EC) No 1049/2001.
  - T-3/13, Ronja v Commission
  - T-56/13, ClientEarth and Stichting BirdLife Europe v Commission
  - T-214/13, Typke v Commission
  - T-419/13, Unión de Almacenistas de Hierros de España v Commission
  - T-456/13, Sea Handling v Commission
  - T-520/13, Philip Morris Benelux v Commission
  - T-538/13, Verein Natura Havel and Vierhaus v Commission
  - T-623/13, Unión de Almacenistas de Hierros de España v Commission
  - T-643/13, Rogesa v Commission
  - T-677/13, Axa Versicherung v Commission
- 6.8. Also, five new appeals have been brought before the Court of Justice against an order/judgment of the General Court.
  - C-127/13 P, Strack v Commission
  - C-399/13 P, Stichting Corporate Europe Observatory v Commission
  - C-612/13 P, ClientEarth v Commission
  - C-615/13 P, ClientEarth and PAN Europe v EFSA (the Commission intervenes in support of the position of EFSA)
  - C-673/13 P, Commission v Stichting Greenpeace Nederland and PAN Europe

7. Conclusions

The number of access to document initial requests has increased from 991 in 2002 to 6,525 in 2013.

The Commission remains by far the institution handling the largest number of both initial and confirmatory requests pursuant to Regulation 1049/2001.<sup>6</sup> The Commission handles roughly twice as many requests as the Council and European Parliament together.

The number of confirmatory applications has continued to increase for the fifth year in a row, as citizens are making more use of their legal right to appeal the initial decision taken by the Commission.

The considerable number of access requests and the high rate of disclosure of documents show that the right of access to documents constitutes an important tool within the Commission's overall efforts to promote transparency. These include, among others, the recent revision of the transparency register and the strengthening of the Commission's guidelines for stakeholder consultation.

In order to ensure transparency in a timely and resource-efficient way, the right of access to documents continues to be complemented by an extensive publication of information and documents on the Commission's legislative and non-legislative activities.

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<sup>6</sup>

- Council: initial requests 2013: 2,212; confirmatory requests 2013: 25;  
- European Parliament: documents requested 2013: 610; confirmatory requests 2013: 1