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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 10 July 2013

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

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Subject: Report from the Commission on the application in 2012 of Regulation (EC)
No 1049/2001 regarding public access to European Parliament, Council and
Commission documents

Delegations will find attached Commission document COM(2013) 515 final.

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Brussels, 10.7.2013
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REPORT FROM THE COMMISSION

**on the application in 2012 of Regulation (EC) No 1049/2001 regarding public access to
European Parliament, Council and Commission documents**

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This report, drawn up pursuant to Article 17(1) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹, covers the year 2012 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 83% of cases at the initial stage the requested documents were disclosed. At the confirmatory stage, either full or partial access was granted in 43% of cases.

1. Registers and Internet Sites

1.1. In 2012, 17.940 new documents were added to the register of Commission documents (see annex – table 1).

1.2. According to Article 17 (1) of Regulation 1049/2001 the Commission has to provide in its annual reports the number of documents in its possession which are “sensitive” in the meaning of Article 9(1) of the Regulation² and have therefore not been recorded in the register. In 2012, 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 2012, that would fall within one of these categories of documents.

1.3. The table below shows the statistics for 2012 on consultation of the Openness and Access to Documents website on EUROPA.

	Number of visitors	Number of sessions	Pages viewed
Total	33.903	40.605	213.244
Monthly average	2.825	3.384	17.770

¹ OJ L 145, 31.5.2001, p. 43

² "Documents originating from the institutions or the agencies established by them, from Member States, third countries or International Organisations, classified as "TRÈS SECRET/TOP SECRET", "SECRET" or "CONFIDENTIEL" in accordance with the rules of the institution concerned, which protect essential interests of the European Union or of one or more of its Member States in the areas covered by Article 4(1) (a), notably public security, defence and military matters" (Article 9(1)).

2. Cooperation with the other Institutions subject to the Regulation

The inter-institutional committee set up pursuant to Art. 15(2) of the Regulation did not meet at political level during the year 2012. However, the three institutions (European Parliament, Council and Commission) held regular meetings at administrative level with a view to share experience, develop best practices and ensure a consistent application of the Regulation.

3. Analysis of Access Applications

- 3.1. In 2012, the flow of access requests at the **initial stage** decreased in number of applications (6014 in 2012 in comparison with 6447 in 2011). The number of replies based on Regulation 1049/2001 was 5274 in 2012 in comparison with 6055 in 2011.
- 3.2. As regards the **confirmatory stage**, the number of the applications received significantly increased by almost 39 % (229 new confirmatory applications in 2012 against 165 in 2011). The total number of responses to confirmatory applications corresponded to the number of applications received (202 cases closed in 2012 in comparison with 162 in 2011). Among those, 160 replies (79 %) have been **confirmatory decisions** on access to documents under Regulation 1049/2001. Their number increased in 2012 by 11% in comparison with 2011 where 144 such decisions were issued. (See annex – table 5)
- 3.3. In 2012, the Commission Secretariat General and Directorate-General for Health and Consumers received the highest number of initial requests (12.10% and 7.28% respectively), very closely followed by the Directorate-General for Competition with 6.81% of initial applications and the Directorate-General Environment with 6.61%. It is worth noting that the interest in obtaining documents from Directorate-General for Taxation and Customs Union (which ranked first in 2011) has decreased, whereas the demand for documents and files held by the Directorate-General for Competition remained at a high level.
- 3.4. The academic world proved once again to be the most active category of applicants, accounting for 22.70% of initial applications (as opposed to 25.73% in 2011). Like in the previous years, it was followed by law firms with 13.58% (as opposed to 11.30% in 2011) and civil society (NGO's, interest groups) with 10.32% (as opposed to 8.59% in 2011) of the total number of applications. For 33,83% of the applications, the socio-professional profile of the applicants is undefined. (See annex – table 8)
- 3.5. The geographical breakdown of initial applications also shows great similarities with previous years, with a slight increase with regard to the ever largest proportion of applications coming from Belgium (21.85%). As opposed to 2011, there was a significant decrease in applications from Italy (12.37% in 2011 to 7.54% in 2012). With the exception of Germany (14.04%) and the United Kingdom (10.17%) none of the Member States, exceeded 10% of applications, the largest numbers coming from highly-populated Member States such as: France, Spain and Poland. The shares of applications from EU-10 and EU-2 Member States are still slightly below the corresponding share originating from EU-15 Member States. (See annex – table 9).

4. Application of Exceptions to the Right of Access

- 4.1. In 2012, the proportion of applications that were fully refused in the first instance slightly increased as opposed to the previous year (16.91% in 2012 against 12.18% in 2011). Full disclosure, has been given in almost three out of every four cases (74.48% against 80.20% in 2011) whereas the percentage of partially disclosed documents slightly increased in comparison to the previous years to reach 8.61 % (in comparison with 7.62 % in 2011). (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 (18.75% against 14.58% in 2011). In addition, there was an increase in cases where a refusal was fully confirmed and a significant decrease in the number of cases where wider access was granted following a confirmatory application. (See annex – table 6)
- 4.3. The percentage of cases where the protection of the Commission's decision-making process (Article 4(3)) was invoked as ground for refusal slightly diminished in comparison with the previous year (25.15% against 25.73% in 2011). It nevertheless comes second on the list of most frequently invoked exceptions, just behind the exception aimed at protecting of the purpose of inspections, investigations and audits (third indent of Article 4(2)), which accounted for 25.32% of cases (against 21.90 in 2011). (See annex – table 7)
- 4.4. The refusal rate based on the protection of commercial interests remained fairly stable (16.94% against 16.83% in 2011). On the other hand, the number of cases where the protection of international relations was invoked decreased significantly (3.58% against 12.02% in 2011). (See annex – table 7)
- 4.5. The most frequently invoked ground for confirming a refusal of access was, as in the previous years, the protection of the purpose of investigations (third indent of Article 4(2)), (45,10% compared with 32.68% in 2011). (See annex – table 7)

The protection of the Commission's decision-making process, was invoked in 15.69% of cases (which evidences a decrease as opposed to 2011). The said tendency concerns however only the cases where the decision-making process was on-going (6.54% against 15.33% in the previous year). It has to be noted that there was an increase of cases concerning opinions for internal use, where the decision had already been taken (9.15 % in comparison with 4% in 2011).

A decrease is to be noted as regards the protection of privacy and integrity of individuals (10.46% against 20.67% in 2011). On the other hand, the protection of commercial interests was invoked almost as frequently as in the previous year (11.76% compared with 14.66% in 2011). As regards the exception based on the protection of court proceedings and legal advice, there was a very significant increase from 1.33% in 2011 to 7.84% in 2012.

5. Complaints to the European Ombudsman

5.1. In 2012 the Ombudsman closed the following 18 complaints against the Commission's handling of requests for access to documents:

10 cases closed with a critical and/or a further remark			
2293/2008/(BB)(FOR)TN	1972/2009/ANA	914/2009/(IP)(EIS)ER	2299/2010/(IP)(EIS)ER
682/2010/(TS)TN	339/2011/AN	388/2011/(PMC)(IP) (EIS)ER	1472/2011/(PMC)(PB)MM N
2466/2011/ER	173/2012/VL		
8 cases closed without further action			
3097/2009/(JF)(IP)EIS	127/2010/VIK	849/2010/KM	1161/2010/BEH
1683/2010/(ELB) MMN	1767/2010/(IP)(EIS) ER	1459/2011/JF	414/2012/MMN

5.2. In the course of the year the Ombudsman opened 20 new inquiries where access to documents was either the main or a subsidiary part of the complaint.

6. Judicial Review

As in previous years, significant new case law was delivered in 2012³.

6.1. The Court of Justice handed down three important judgments on appeal in the *Agrofert*⁴ and *Editions Odile Jacob*⁵ cases as well as in the *IFAW*⁶ case. The first two judgments concern competition policy whereas in the latter the Court gave an interpretation of the assessment of objections raised by Member State to disclosure of documents originating from them.

The Court of Justice issued two orders rejecting the application in cases C-208/11P (unfounded) and C-554/11P (inadmissible), both brought by *Internationaler Hilfsfonds* against the Commission.

³ For details of each case referred to below, see <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en>

⁴ Judgment of 28 June 2012 in case C-477/10 P, *Commission v Agrofert Holding a.s.*, not yet reported.

⁵ Judgment of 28 June 2012 in case C-404/10 P, *Commission v Editions Odile Jacob SAS.*, not yet reported.

⁶ Judgment of 21 June 2012 in case C-135/11 P - *IFAW Internationaler Tierschutz-Fonds v Commission*, not yet reported.

6.2. As for the General Court, it has handed down 6 judgments related to the right of access to documents:

T-59/09 <i>Germany v Commission</i> , judgment of 14.2.2012	T-529/09, <i>S. in t'Veld v Council</i> , judgment of 4.5.2012 (the Commission interevend in support of the position of the Council)	T-344/08, <i>EnBW v Commission</i> , judgment of 22.5.2012
T-6/10, <i>Sviluppo Globale v Commission</i> , judgment of 22.5.2012	T-300/10, <i>Internationaler Hilfsfonds v Commission</i> , judgment of 22.5.2012	T-167/10 <i>European Dynamics v Commission</i> , judgment of 6.12.2012

6.3. In three cases the Court ordered their removal from the register following the withdrawal by the applicant:

T-362/11 <i>Stichting Greenpeace Nederland and PAN Europe v Commission</i>	T-337/09 <i>Colegio Oficial de Farmaceuticos v Commission</i>	T-333/12, <i>Soltau v Commission</i>
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6.4. In the following three cases, the Court ordered that there was no need to adjudicate:

T-330/11, <i>Mastercard v Commission</i>	T-341/11, <i>Ecologistas en Acción v Commission</i>	T-180/10, <i>Nickel Institute v Commission</i>
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6.5. Three applications were rejected by order of the General Court:

T-359/10, <i>Ecologistas en Acción-CODA</i> (manifestly unfounded)	T-278/11, <i>ClientEarth v Commission</i> (manifestly inadmissible)	T-17/10, <i>Steinberg v Commission</i> (partly inadmissible, partly unfounded)
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6.6. 14 new cases were brought against Commission decisions under Regulation (EC) No 1049/2001.

T-185/12 <i>HUK-Coburg Haftpflicht-Unterstützungs-Kasse kraftfahrender Beamter Deutschlands a.G. in Coburg c/ Commission européenne</i>	T-188/12 <i>Patrick Breyer v Commission</i>	T-306/12 <i>Spirlea v Commission</i>
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T-333/12 <i>C. Soltau v Commission</i>	T-402/12 <i>Carl Schlyter v Commission</i>	T-418 <i>Jürgen Beninca v Commission</i> [order of the General Court of 19 February 2013, declaring that there is no need to adjudicate in this case and removing the case from the registry]
T-419/12 <i>LVM Landwirtschaftlicher Versicherungsverein Münster aG v Commission</i>	T-420/12 <i>VHV Allgemeine Versicherung AG v Commission</i>	T-421/12 <i>Württembergische Gemeinde-Versicherung aG v Commission</i>
T-476/12 <i>Saint-Gobain Glass Deutschland GmbH v Commission</i>	T-482/12 <i>Internationaler Hilfsfonds e.V. v Commission</i>	T-498/12 <i>Tourisme Consortium Loutraki SA Gouvernement local - Loutraki SA - Club Hôtel et Hôtel Casino Loutraki et Entreprises Touristiques AE v Commission</i>
T-526/12 <i>AXA Versicherung AG v Commission</i>	T-561/12 <i>Jürgen Beninca v Commission</i>	

- 6.7. Also, one new appeal has been brought to the Court of Justice against order/judgment of the General Court.

C-365/12P <i>Commission v EnBW Energie Baden-Württemberg AG e.a</i>		
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7. Conclusions

After nine years of a steady increase, from 500 to around 6.500, the number of access requests remained stable in 2010 and 2011 and has now come down to 6.000. The Commission remains by far the institution handling the largest number of requests for access to documents.

On the other hand, the number of confirmatory applications has increased. Applicants are better aware of their legal rights to appeal the initial decision taken by the Commission.

All this could suggest that the Commission has reached, via various means and forums, including access to documents, a stable and well-known transparency framework .

Building on what was already achieved in 2011, active transparency with regard to the legislative activity of the Commission was further enhanced in 2012. As a consequence, a significant amount of initial requests for access and almost all confirmatory applications concern the Commission's activities in the field of monitoring the application of EU law, including in particular the implementation of competition policy. When handling such requests, the Commission has to strike the right balance between ensuring the transparency of its activities and preserving its ability to properly carry out the tasks conferred upon it by the Treaties.

ANNEX

Statistics relating to the application of Regulation (EC) No 1049/2001

1. NUMBER OF DOCUMENTS ENTERED IN THE REGISTER

	COM	SEC	C	JOIN	SWD	OJ	PV	Total
2012	1832	1429	13542	53	859	130	95	17940

INITIAL REQUESTS

2. APPLICATIONS RECEIVED AND HANDLED

	2010	2011	2012
Applications received	6361	6477	6014
Replies given ^{7 8}	7148	7075	6334
Replies given based on Regulation 1049/2001	6127	6055	5274

3. RESULT

	2010		2011		2012	
	No	%	No	%	No	%
Access granted	5034	82.16	4856	80.20	3928	74.48
Access refused	764	12.47	737	12.18	892	16.91
Partial access	329	5.37	462	7.62	454	8.61
total	6127	100	6055	100	5274	100

⁷ Please note that a single request can concern several documents and can consequently give rise to several different replies;

⁸ Please note that the category "Replies given" includes the replies given outside the scope of Regulation 1049/2001, for example replies given under Regulation 45/2001;

4. BREAKDOWN OF REFUSALS BY EXCEPTION APPLIED (%)

	2010	2011	2012
4.1.a. 1st indent – Protection of public security	1.94	2.40	1.34
4.1.a. 2nd indent Protection of defence and military matters	0.14	0.39	0.11
4.1.a. 3rd indent - Protection of international relations	9.83	12.02	3.58
4.1.a. 4th indent – Protection of the financial, monetary or economic policy	2.15	1.88	1.40
4.1.b. Protection of privacy and the integrity of the individual	9.76	8.90	14.65
4.2.1st indent - Protection of commercial interests	11.84	16.83	16.94
4.2 2nd indent - Protection of court proceedings and legal advice	7.32	6.76	9.84
4.2 3rd indent - Protection of the purpose of inspections, investigations and audits	26.63	21.90	25.32
4.3 subparagraph 1– Decision-making process, no decision yet taken	16.80	17.15	20.23
4.3. subparagraph 2- Decision making process, decision already taken: opinions for internal use as part of deliberations and preliminary consultations	9.62	8.58	4.92
4.5. Refusal by Member State/third author	3.94	3.18	1.67
total	100	100	100

CONFIRMATORY REQUESTS

5. APPLICATIONS RECEIVED AND HANDLED

	2010	2011	2012
Applications received	181	165	229
Replies to applications	152	162	202
Decisions on confirmatory applications based on Regulation 1049/2001	122	144	160

6. RESULT

	2010		2011		2012	
	No	%	No	%	No	%
Confirmation	61	50	61	42.36	91	56.88
Partial revision	42	34.43	62	43.05	39	24.38
Full revision	19	15.57	21	14.58	30	18.75
total	122	100	144	100	160	100

7. BREAKDOWN OF REFUSALS BY EXCEPTION APPLIED (%)

	2010	2011	2012
4.1.a. 1st indent – Protection of public security	2,67	1.33	1.31
4.1.a. 2nd indent - Protection of defence and military matters	0	2.00	0.65
4.1.a. 3rd indent - Protection of international relations	6,67	4.67	7.19
4.1.a. 4th indent – Protection of the financial, monetary or economic policy	3,33	3.34	0
4.1.b. - Protection of privacy and the integrity of the individual	9,33	20.67	10.46
4.2. 1st indent - Protection of commercial interests	16.67	14.66	11.76
4.2. 2nd indent - Protection of court proceedings and legal advice	10	1.33	7.84
4.2. 3rd indent - Protection of the purpose of inspections, investigations and audits	32	32.68	45.10
4.3 subparagraph 1 – Decision-making process, no decision yet taken	11,33	15.33	6.54
4.3. subparagraph 2 - Decision making process, decision already taken: opinions for internal use as part of deliberations and preliminary consultations	8	4.00	9.15
4.5. Refusal by Member State	-	-	-
total	100	100	100

BREAKDOWN OF INITIAL REQUESTS

8. ACCORDING TO SOCIAL AND OCCUPATIONAL PROFILE OF APPLICANTS (%)

	2010	2011	2012
Academics	23.24	25.73	22.70
Lawyers	10.69	11.30	13.58
Civil society (interest groups, industry, NGOs. etc.)	8.18	8.59	10.32
Public authorities (other than the EU institutions)	13.56	8.20	7.12
Other EU institutions	8.32	8.15	7.64
Journalists	3.35	3.25	4.81
Not specified	32.68	34.78	33.83
total	100	100	100

9. ACCORDING TO GEOGRAPHICAL ORIGIN (%)

	2010	2011	2012
Austria	2.08	1.38	1.78
Belgium	17.95	21.42	21.85
Bulgaria	0.69	0.93	0.70
Cyprus	0.20	0.25	0.08
Czech Republic	4.23	0.93	2.01
Denmark	2.02	2.11	1.58
Estonia	0.09	0.19	0.17
Finland	0.81	1.57	0.55
France	9.05	8.90	7.53
Germany	16.62	12.27	14.04
Greece	1.22	1.10	1.73
Hungary	0.89	0.96	0.63
Ireland	1.49	1.02	1.50
Italy	8.85	12.37	7.54
Latvia	0.13	0.15	0.17
Lithuania	0.31	0.42	0.30
Luxembourg	1.99	2.12	1.79
Malta	0.22	0.12	0.17

Netherlands	4.43	4.18	4.62
Poland	2.76	2.68	2.79
Portugal	1.16	1.15	1.11
Romania	1.11	0.87	0.91
Slovakia	0.56	0.56	0.81
Slovenia	0.52	0.31	0.22
Spain	6.86	7.16	5.70
Sweden	2.18	1.81	2.16
United-Kingdom	7.24	8.59	10.17
Non-EU European countries	0.50	0.40	0.37
North America	0.11	0.23	0.88
Australia and New Zealand	0.09	0.03	0.03
Africa	0.05	0.02	0
South America	0.05	0.02	0.03
Asia	0.04	0.06	0.05
Not specified	3.49	3.73	6.03
total	100	100	100

10. ACCORDING TO AREA OF INTEREST (%)

Directorate-General / Service	2010	2011	2012
AGRI - Agriculture and Rural Development	3.15	2.62	3.44
BEPA - Bureau of European Policy Advisers	0.03	0.11	0
BUDG - Budget	1.24	1.02	0.81
CLIMA - Climate Action	1.21	2.22	2.86
COMM - Communication	0.74	1.26	0.65
COMP - Competition	9.07	6.99	6.81
CONNECT - Communications Networks, Content and Technology ⁹	1.79	1.98	1.74
DEVCO - Development and Cooperation-EuropeAid (former DEV + AIDCO)	2.77	3.30	4.67
DGT - Translation	0.36	0.14	0.20
DIGIT - Informatics	0.09	0.09	0.12
EAC - Education and Culture	1.13	1.05	1.13
ECFIN - Economic and Financial Affairs	2.32	1.57	1.11
ECHO - Humanitarian Aid and Civil Protection	0.28	0.33	0.18

⁹ Please note that it was previously DG INFSO;

ELARG - Enlargement	1.47	1.04	0.95
EMPL - Employment, Social Affairs and Inclusion	2.74	1.64	3.47
ENER - Energy	2.91	5.86	5.15
ENTR - Enterprise and Industry	4.48	4.84	4.55
ENV - Environment ¹⁰	4.86	6.37	6.61
EPSO - European Personnel Selection Office	0.14	0.23	0.23
ESTAT - Eurostat	0.31	0.20	0.20
FPIS - Foreign Policy Instruments Service ¹¹	-	-	0.13
HOME - Home Affairs	1.63	4.74	3.14
HR - Human Resources and Security + OIB (Office for Infrastructure and Logistics in Brussels) + OIL (Offices for Infrastructure and Logistics in Luxembourg) + PMO (Office for Administration and Payment of Individual Entitlements)	2.29	2.34	2.98
IAS - Internal Audit Service	0.09	0.05	0.02
JUST - Justice (former JLS) ¹²	6.75	2.54	3.72
MARE - Maritime Affairs and Fisheries	0.66	0.95	0.66
MARKT - Internal market and services	6.14	5.72	5.02
MOVE - Mobility and Transport	3.13	3.02	2.66
OLAF - European Anti-Fraud Office	0.27	0.25	0.48
OP - Publications Office	0.19	0.37	0.12
REGIO - Regional Policy	3.06	2.29	3.41
RTD – Research and Innovation + JRC – Joint Research Centre	1.82	1.27	1.61
SANCO - Health and Consumer	5.44	6.96	7.28
SCIC - Joint Interpreting and Conference Service	0.08	0.00	0.02
SG - Secretariat General	11.64	10.12	12.10
SJ - Legal Service	2.68	2.76	4.37
TAXUD - Taxation and Customs Union	5.30	7.80	4.92
TRADE - Trade	3.06	3.47	2.48
total	100	100	100

¹⁰ Please note that DG ENV split into DG ENV and DG CLIMA in 2010;

¹¹ Please note that since the creation of the European External Action Service (EEAS), documents of FPIS are the only ones remained within the Commission;

¹² Please note that DG JLS split into DG JUST and DG HOME in 2010;