



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

From:	General Secretariat of the Council
On:	3 March 2014
To:	Working Party on Information
Subject:	Own-initiative inquiry OI/6/2013/KM by the European Ombudsman concerning the European Parliament, the Council of the European Union and the European Commission

Delegations will find attached for information a reply to the letter sent on 11 December 2013 by the European Ombudsman to the Secretary-General of the Council relating to an own-initiative inquiry OI/6/2013/KM by the European Ombudsman concerning the European Parliament, the Council of the European Union and the European Commission.

DRAFT

Brussels,

**Ms Emily O'Reilly
European Ombudsman
1, Avenue du Président Robert Schuman
B.P. 403
F-67001 Strasbourg Cedex**

**Subject: Your letter of 11 December 2013 relating to your own-initiative inquiry
OI/6/2013/KM concerning the European Parliament, the Council of the European
Union and the European Commission**

Dear Ms O'Reilly,

Thank you for your letter of 11 December 2013 relating to your own-initiative inquiry OI/6/2013/KM concerning the European Parliament, the Council of the European Union and the European Commission. I am pleased to provide you the requested information on the matters mentioned in your letter with respect to the Council of the European Union.

I look forward to engaging in further discussions on this matter and to providing additional information as the inquiry progresses.

Yours sincerely,

Uwe Corsepius

I. THE INQUIRY

1. By letter of 11 December 2013, the European Ombudsman opened an own-initiative inquiry OI/6/2013/KM concerning the European Parliament, the Council of the European Union and the European Commission.
2. In her letter, the Ombudsman referred to the Decision closing own-initiative inquiry 3/2011/KM, which had been launched in 2011. In this Decision, the Ombudsman had stated the intention to open a new own-initiative inquiry in order to assess the practical effects of the measures which the Council had envisaged and listed in its reply to the inquiry. The Ombudsman also mentioned that it had come to her attention, through the complaints handled by her office and from the case-law of the Court, that the three institutions of the EU most concerned by the application of Regulation 1049/2001, i.e. the European Parliament, the Council and the Commission "*may encounter problems of a systemic kind in respecting the time limits provided for in the Regulation.*" The Ombudsman had therefore decided to open a new own-initiative inquiry in order to examine whether such problems exist and, if so, how they might best be tackled.
3. As a first step, the Ombudsman has asked the Council to provide her with information on matters relating to the handling of initial applications, confirmatory applications and fair solutions in accordance with Article 6(3) of Regulation 1049/2001 during 2010, 2011 and 2012. The requested information is provided in point II below in the form of figures and without much additional explanation, as the Council has understood that it will have the opportunity to provide any clarifications needed at a later stage.

II. INFORMATION BY THE COUNCIL

The Council would first like to indicate that for the purposes of Regulation (EC) No 1049/2001, and in line with Article 3(1) of Regulation (EEC, Euratom) No 1182/71 determining the rules applicable to periods, dates and time limits, the day during which a new request for public access is registered by the Transparency service of the General

Secretariat of the Council is not counted for the purposes of calculating the time limit in question. However, when data is extracted from the Council's database, including for the purposes of replying to this own-initiative inquiry, the database also counts the day of the registration of the application. All time periods indicated below therefore contain one day too much in comparison to what is actually the case when calculating the delay in accordance with the applicable rules.

1. HANDLING OF INITIAL APPLICATIONS IN 2010, 2011 AND 2012

- i. During the years covered by the inquiry, the Council received the following number of initial applications¹:

2010	2011	2012
2 764	2 116	1 871

- ii. On average, the following number of working days passed from the registration of the initial application until the final decision was taken²:

2010	2011	2012
16,44	15,46	15,65

¹ These figures also include initial requests for access received by the European Council as those are also handled by the General Secretariat of the Council.

² The figures indicated in the Council's 2010, 2011 and 2012 Annual reports on the implementation of Regulation 1049/2001 also include the applications for which a fair solution was sought with the applicant in accordance with Article 6(3) of Regulation 1049/2001. This is why they differ from the figures mentioned here.

In the three cases with the longest processing time, the number of working days needed for completing the handling of the request was as follows³:

2010	2011	2012
182	146	89
162	115	89
152	109	61

- iii. The Council extended the time limit in accordance with Article 7(3) of Regulation 1049/2001 in the following number of cases:

2010	2011	2012
773	513	452

In cases where the time limit had been extended in accordance with Article 7(3) of Regulation 1049/2001, the average number of working days needed for completing the handling of the request was as follows:

2010	2011	2012
30,31	29,27	28,58

- iv. All initial applications received by the Council in 2010, 2011 and 2012 were processed and closed by the date of this letter, none of them remain pending. No initial applications received in 2013 are pending, either.

³ The requested documents were examined in batches, the applicants thus received replies from the Council on a regular basis. The number of days indicated is calculated by reference to the date where the applicant got the last batch of documents from the Council.

2. HANDLING OF CONFIRMATORY APPLICATIONS IN 2010, 2011 AND 2012

- i. During the three years covered by the inquiry, the Council received the following number of confirmatory applications:

2010	2011	2012
28	27	23 ⁴

- ii. On average, the following number of working days passed from the registration of the confirmatory application until the final decision was taken:

2010	2011	2012
26,96	28,30	27,90

In the three cases with the longest processing time, the number of working days needed for completing the handling of the confirmatory request was as follows:

2010	2011	2012
46	42	45
34	40	39
33	40	31

⁴ This figure includes one confirmatory application introduced to the European Council.

- iii. The Council extended the time limit in accordance with Article 8(2) of Regulation 1049/2001 in the following number of cases⁵:

2010	2011	2012
25	24	20

In cases where the time limit had been extended in accordance with Article 8(2) of Regulation 1049/2001, the average number of working days needed for completing the handling of the request was as follows:

2010	2011	2012
29,00	27,63	25,95

- iv. All confirmatory applications received by the Council in 2010, 2011 and 2012 were dealt with and closed by the date of this letter, none of them remain pending. No confirmatory applications received in 2013 are pending, either.

⁵ The number of confirmatory applications received in 2010 and 2011 for which the time limit was extended differs very slightly from the numbers given in the Council's 2010 and 2011 Annual reports on the implementation of Regulation 1049/2001. A clerical error had occurred when calculating the figures for the annual reports.

3. HANDLING OF FAIR SOLUTIONS IN ACCORDANCE WITH ARTICLE 6(3) OF REGULATION 1049/2001 IN 2010, 2011 AND 2012

- i. During the years covered by the inquiry, the Council relied on Article 6(3) of Regulation 1049/2001 to propose a fair solution to applicants in the following number of cases:

2010	2011	2012
33	20	17

- ii. The option to rely on Article 6(3) of Regulation 1049/2001 to propose a fair solution was in most cases used by the Council shortly after having received the application, in any case at the latest within 15 working days, i.e. before the expiration of the first time limit under Article 7(3) of Regulation 1049/2001. Only in one case in 2011 was the time limit first extended pursuant to Article 7(3) of Regulation 1049/2001 and only later, following contacts with the applicant, did the Council propose a fair solution.

The reasons given by the Council to propose a fair solution were in most cases a very large number of requested documents as well as the particular complexity of the examination incumbent upon the institution.

- iii. On average, the following number of working days passed from the registration of an application for which the Council had proposed a fair solution until the final decision was taken⁶:

2010	2011	2012
103,85	79,14	85,63

⁶ When conferring with applicants in such cases, the Council usually suggests that the requested documents be examined in batches, thus allowing the applicant to receive replies from the Council on a regular basis. The number of days indicated is calculated by reference to the date where the applicant got the last batch of documents from the Council:

In the three cases with the longest processing time, the number of working days needed for completing the handling of the request was as follows:

2010	2011	2012
244	245	183
220	197	182
206	194	180
