

# Public access to European Parliament, Council and Commission documents

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This report from the Commission, which covers 2008, was drawn up pursuant to Article 17(1) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

The Commission's conclusions concentrate on the following issues:

- 1) **Analysis of access applications:** the constant increase in the number of initial applications since the Regulation was adopted was again observed in 2008, with 1001 applications more than in 2007, a **25% increase**. The number of confirmatory applications fell appreciably: 156 such applications were registered in 2008 as against 273 in 2007. With regard to the breakdown of applications by area of interest, transport and energy, the internal market, competition, cooperation in judicial matters, the environment and enterprise policy accounted for nearly 40% of applications. The geographical breakdown of applications remained constant. Almost 20% of applications came from persons or bodies established in Belgium because of the number of enterprises, law firms, associations and NGOs operating at European level. Apart from that, the bulk of the applications came from the most highly-populated Member States, i.e. Germany, Italy, France, the United Kingdom, Spain and the Netherlands, which together accounted for half the applications (49.86%). The share of applications from the new Member States remained modest.
- 2) **2) Characteristics of requests and reasons for refusals:** the Commission notes that, as in past years, a large proportion of **access applications** relate to Commission monitoring of the application of Community law. In a very large number of cases, access was applied for in order to obtain documents likely to support the applicant's position in a complaint concerning, for example, an alleged infringement of Community law, or in an administrative or judicial action concerning, for example, a Commission decision on competition policy. These applications generally relate to large volumes of documents, analysis of which gives rise to a **substantial administrative burden**. Moreover, it should be noted that the **exception relating to protection of the Commission's decision-making process** is cited mainly to protect decision-making on individual issues. In the legislative field, more and more documents are made available to the public directly, without waiting for access applications. The Commission's Directorates-General have developed their websites on specific policies and have used them to make a large number of documents publicly available. The **exception concerning the protection of commercial interests** is mainly cited in connection with requests for access to competition policy documents. These trends, which have become more marked over the years, guided the Commission's thinking when it drew up the proposed amendments to the Regulation.
- 3) **Developments in case-law:** the Court of First Instance confirmed its earlier rulings on a number of points:
  - there is a requirement in principle for concrete, individual assessment of documents to which access is requested;
  - the specific interest that an applicant may claim is not relevant for assessing the validity of a decision refusing access;

- the investigation/audit exception applies throughout the investigation/audit proceedings.

The Court also clarified other points:

- the Ombudsman procedure is distinct from the judicial procedure, these being alternative procedures;
- institutions must be allowed to protect their internal consultations and deliberations, notably against targeted external pressure, where it is necessary in the public interest in order to safeguard their ability to carry out their tasks in particular when they are exercising their administrative decision-making powers;
- nevertheless, they had to establish the reality of such external pressure with certainty and show that there was a reasonably foreseeable risk that the decision to be taken would be substantially affected, particularly in the legislative field;
- implicit refusal was still refusal without stating reasons, and could therefore be annulled on those grounds alone.