

Public access to European Parliament, Council and Commission documents

2000/0032(COD) - 30/06/2010 - Follow-up document

This report, which covers 2009, was drawn up pursuant to Article 17(1) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

Analysis of access applications: the number of initial applications remained stable in 2009 (5 055 applications compared with 5 197 in 2008). The number of confirmatory applications fell slightly: 134 in 2009 as against 156 in 2008. A large number of applications concerned entire files relating to various administrative procedures. With regard to the breakdown of applications by area of interest, the environment, transport and energy, cooperation in judicial matters, the internal market and competition accounted for nearly 40% of applications.

The breakdown of applications by socio-professional profile confirmed the significance of applications from the academic world, which remained the largest single category, albeit smaller than in 2008 (21.29% of applications compared with 31.03% in 2008).

Lastly, 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, France, Italy, Spain, the United Kingdom and the Netherlands, which together accounted for almost half the applications (49.75%). The share of applications from the new Member States remained modest.

Application of exceptions to the right of access: the percentage of initial applications receiving positive responses was higher than in 2008. In 84.23% of cases (compared with 82.68% in 2008) the documents were disclosed in full, while in 4.11% of cases (compared with 3.33% in 2008) partial access was granted.

The percentage of decisions confirming the initial position – which had already fallen considerably in 2008 – again fell significantly in 2009 (by over 25%, from 48.08% of the total in 2008 to 22.50% in 2009).

The percentage of cases in which applications were granted in full after an initial refusal virtually tripled (50% as against just 18.59% in 2008). The percentage of cases in which partial access was granted after an initial refusal fell slightly (27.50%, as against 33.33% in 2008).

The two main reasons for refusing an initial application continued to be:

- protecting the purpose of inspections, investigations and audits, with a slight increase on 2008 (27.61% of refusals compared with 26.63% in 2008);
- protecting the Commission's decision-making process, with a percentage of 17.80% for cases where the decision had still to be taken and 7.81% for those concerning opinions for internal use, totalling 25.61% of refusals (compared with a total of 28.72% in 2008).

The percentage of refusals based on the protection of commercial interests remained significant: 13.99% of refusals (14.4% in 2008).

The main grounds for confirming refusal of access were:

- protection of the purpose of investigations (25.91% compared with 27.85% in 2008);
- protection of commercial interests (17.52% compared with 24.89% in 2008);
- protecting the Commission's decision-making process, with a percentage of 12.77% for cases where the decision had still to be taken and 13.87% for those concerning opinions for internal use, totalling 26.64% of refusals (compared with a total of 29.54% in 2008).

Refusal based on the outright opposition of the Member State is no longer used since the Court⁵ ruled that Article 4(5) of the Regulation does not confer on the Member State a general and unconditional right of veto so that it could in a discretionary manner oppose the disclosure of documents originating from it. The Member State is required to state the reasons for its objection with reference to the exceptions provided for in the Regulation; only these exceptions can constitute grounds for refusal.

Court action: the Court of First Instance handed down two judgments on cases relating to Commission decisions partially refusing access to documents under Regulation (EC) No 1049/2001. These were the judgments in Cases T-121/05 and T-166/05, *Borax Europe Ltd v Commission*. In these judgments, the Court set aside the Commission decisions refusing access to various documents relating to a meeting of a group of scientific experts specialised in the toxic effects of chemicals on human reproduction.

Conclusions: as in past years, the overall picture that emerges from analysis of access applications is that a large proportion of them relate to Commission monitoring of the application of Community law. In a very large number of cases, access was requested 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.

It should also 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 DGs 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 and tender procedures.

The Court of First Instance has confirmed its case-law on the following points:

- an excessively general reason for refusal leading to the exclusion of a whole category of documents is, in itself, insufficient to justify the application of an exception;
- the institution must prove that there is a risk of an adverse effect in the case in question, and this risk must be reasonably foreseeable and not simply hypothetical;
- with respect to "legislative" activities, the case-law of the Court of First Instance is consistent with the judgment of the Court of Justice in the *Turco* case.