

# Public access to European Parliament, Council and Commission documents

2000/0032(COD) - 12/08/2011 - Follow-up document

The Commission presents a report on the application of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, covering the year 2010 and based on statistical data which reflect the number of applications and not of documents requested.

**Revision of the Regulation:** the [proposal for a recast of the Regulation](#), submitted by the Commission on 30 April 2008, is still at first reading. The Parliament voted a report with amendments on 11 March 2009 but postponed the vote on the legislative resolution. After the June 2009 elections, the new Parliament has resumed work on the Commission proposal. The committees for Constitutional Affairs and for Petitions adopted their opinions on 30 November 2010 and 1 December 2010 respectively. The Civil Liberties committee has not yet voted on a new draft report. In the Council, the proposal has been examined at the working group level.

Following the entry into force of the Treaty of Lisbon on 1 December 2009, the Commission has submitted on 21 March 2011 a [new proposal](#) with a view to adapting Regulation 1049/2001 to the requirements of the Treaty of Lisbon. This proposal aims at extending the institutional scope of the Regulation to all the EU institutions, bodies, offices and agencies, with some restrictions as regards the European Court of Justice, the European Central Bank and the European Investment Bank.

**Analysis of access applications:** 2010 has seen a significant increase of the number of initial applications made under the Regulation (6127 applications compared with 5055 in 2009, i.e 21% more). The **number of substantive decisions on confirmatory applications** issued during 2010 remained stable: 122 decisions of substance in 2010 against 120 in 2009. The total number of responses to confirmatory applications was 152. The additional 30 cases have been closed without a formal decision the under Regulation. They concern either applications which were devoid of purpose, or requests which were handled under another, more appropriate legal basis, e.g. under Regulation (EC) No 45/2001 on personal data protection as regards requests for access to the applicant's own personal data. The number of confirmatory applications received increased from 140 in 2009 to 181 in 2010. The difference between the number of confirmatory applications received and the number of decisions issued is reflected in the number of cases pending at the end of the year (68).

The report goes on to make the following points:

- **Competition policy** comes first on the list of domains of interest with 9.07% of initial applications, followed closely by other major EU policy areas, such as home and justice affairs, transport and energy, the internal market, taxation and customs union, health and consumer protection, environment and enterprise policy;
- the **main categories of applicants** remain the academic world, accounting for 23.24% of initial applications, law firms with 10.69 % and civil society with 8.18% of the total number of applications. For 32.68 % of the applications, the socio-professional profile is undefined;
- the **geographical breakdown** of initial applications also remained very similar to previous years. However, whereas for obvious reasons the largest proportion of applications, namely 17.95%, came from persons or bodies established in Belgium, an almost equal proportion of applications (16.62%) originated from Germany. None of the other Member States, exceeded 10% of applications, the largest numbers coming from the highly-populated Member States, i.e. France, Italy, Spain, the United Kingdom and the Netherlands, which together accounted for 36.45% of the applications. The

share of applications from the new Member States slightly increased with 4.23% of applications originating from the Czech Republic and 2.76% from Poland.

**Application of exceptions to the right of access:** the percentage of initial applications which were fully granted remained in 2010 above 80% (82.16%), while partial access was granted in 5.37% of initial applications. In 82.16% of cases (compared with 84.23% in 2009) the documents were disclosed in full, while in 5.37% of cases (compared with 4.11% in 2009) partial access was granted. This means that as in 2009, the percentage of applications that were refused in the first instance in full (for various reasons) stabilised around 12%. After a decrease in 2009, the percentage of decisions confirming the initial position show a return to a level comparable to the one of 2008 (50% in 2010, against 48.08% in 2008 and only 22.50% in 2009). Also the percentage of cases in which access was granted in full after an initial refusal returned to a level similar to 2008 (15.57% in 2010 against 50% in 2009 and 18.59% in 2008). On the other hand, the percentage of cases in which partial access was granted after an initial refusal, increased noticeably (34.43% in 2010, as against 27.50% in 2009).

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

- the protection of the purpose of inspections, investigations and audits, with a slight decrease compared to 2009 (26.63% of refusals instead of 27.61% in 2009);
- the protection of the Commission's decision-making process with a percentage of 16.80% for cases where the decision had still to be taken and 9.66% for those concerning opinions for internal use, totalling 26.42% of refusals (compared with a total of 25.61% in 2009). The percentage of refusals based on the protection of commercial interests slightly decreased in comparison with the previous year amounting to 11.84% (instead of 13.99% in 2009).

The main grounds for confirming a refusal of access were:

- the protection of the purpose of investigations (32% compared with 25.91% in 2009);
- the protection of commercial interests (16.67% compared with 17.52% in 2009);
- the protection of the Commission's decision-making process, with a percentage of 11.33% for cases where the decision had still to be taken and 8% for those concerning opinions for internal use, totalling 19.33% of refusals (compared with a total of 26.64% in 2009).

**Judicial review:** the report sets out the cases heard over the year and discusses the important clarifications in relation to the interpretation of both substantive and procedural aspects of Regulation. It notes that 2010 was a very intensive year as regards new case law.

The **report concludes** that in 2010, there was again a significant increase in the volume of access requests, but despite this 20% increase, the ratio of disclosure remains high: four out of five requests receive a positive reply. It is noteworthy that, in ten years time, the number of access requests has risen from 500 to 6000 per year. Given the overall volume of requests, the number of confirmatory applications, complaints to the Ombudsman and applications to the Court remains very modest. Many requests cover infringement proceedings, antitrust, merger, State aid or antidumping cases. As in the previous years, requests for access concern mainly the Commission's role in enforcing EU law, where transparency must be balanced against other legitimate interests, in accordance with the applicable rules. As regards Commission initiatives for new legislation, there is already a high degree of transparency, as many documents are made public pro-actively.