

Public access to European Parliament, Council and Commission documents

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The Commission presented a report on the application in 2017 of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

Applications for access

In 2017, the number of initial applications increased by almost 3% (6 255 compared to 6 077 in 2016). The requested documents were fully or partially disclosed in 82% of the 6 255 cases at the initial stage, and wider or even full access was granted in 46.9% of the 299 cases reviewed at the confirmatory stage. The number of confirmatory replies based on Regulation 1049/2001 increased significantly by 15 %, from 219 in 2016 to 258 in 2017.

The Directorate-General for Competition received the highest proportion of initial applications (9.9% in comparison to 7.2% in 2016), whilst the Directorate-General for Health and Food Safety occupied the second rank.

Most initial applications in 2017 continued to originate from citizens (37.4% of all applications) followed by academic institutions and think tanks (21.6% in 2017 in comparison to 16.0% in 2016), and by companies and legal professionals (13.6% and 13.2% respectively of initial applications).

Regarding the geographical breakdown of initial applications, the largest proportion of initial applications continued to originate from applicants residing or based in Belgium (25.7%, compared to 27.2% in 2016), followed by the United Kingdom (a significant increase, from 10.0% in 2016 to 15.2% in 2017) and Germany (11.9%, compared to 12.6% in 2016).

Application of exceptions to the right of access

In 2017, full or partial access to documents was given in more than 82% of cases at the initial stage (82.0% in comparison to 81.3% in 2016). Full access continued to be given in almost 62% of all cases. Almost every second initial reply challenged by a confirmatory application was (fully or partially) reversed at confirmatory stage (46.9% in 2017 compared to 52% in 2016).

Invoked exceptions to the right to access

The protection of privacy and the integrity of the individual continued to be the main reason for (full or partial) refusal of access at the initial stage, remaining constant at 31.3%. The second most invoked exception was the protection of the purpose of inspections, investigations and audits (17.6 in 2017 compared to 16.2% in 2016). The exception aimed at protecting commercial interests, occupying the third place, was invoked more frequently than in 2016 (16.8% in 2017 compared to 13.7% in 2016). The relative use of the exception protecting the decision-making process of the institution slightly decreased (16.3% in 2017, compared to 18.8% in 2016).

Ombudsman and judicial review

In 2017, the European Ombudsman opened 25 new inquiries where access to documents was either the main or a subsidiary part of the complaint (a significant increase in comparison to 2016, when 12 new

inquiries were opened, reflecting the increased importance given by the European Ombudsman to that area of activity).

The report notes that in 2017, the EU Courts have delivered important new case law that will influence the European Commission's practice under Regulation (EC) No 1049/2001. It details the judgments delivered by the Court of Justice and the General Court.

Regarding commercial interests, the General Court ruled that documents submitted under the REACH Regulation do not automatically fall under a general presumption of refusal of access. The fact that a document may be protected by an intellectual property right flowing from sectorial legislation does not automatically imply that the document is to be considered a business secret. The release of documents reflecting exposure levels to dangerous chemical substances can in some cases be considered justified by an overriding public interest.

Concerning the purpose of investigations, the General Court confirmed the general presumption of non-accessibility of documents pertaining to a State aid file.

The Commission states that it continued to deliver on its commitment to increase transparency, both under Regulation (EC) No 1049/2001 and in the framework of its broader transparency agenda. It did this through:

- proactive publications that help to enhance the quality and quantity of information and documents disseminated to the general public via its websites;
- progressive implementation of the Better Regulation Agenda;
- the policy concerning 'revolving doors';
- the proposal for an Interinstitutional Agreement on a mandatory Transparency Register;
- various initiatives aimed at increasing pro-active transparency, including: (i) the systematic publication of information on the meetings of the Commission's political leaders and senior officials with stakeholders; (ii) the publication of relevant documents on the ongoing withdrawal negotiations with the United Kingdom; (iii) the launch of the new online Interinstitutional Register of Delegated Acts; and (iv) the regular publication of mission expenses of individual Commissioners.

The European Commission remains by far the EU institution handling the largest number of requests for access to documents. The high disclosure rate of documents following numerous access requests has resulted in a large number of documents being made available.