Basic information

2003/2022(INI) INI - Own-initiative procedure	Procedure completed
Documents of the European Parliament, Council and Commission: public access (implem. Regulation (EC) No 1049/2001) **Subject** 1.20.05 Public access to information and documents, administrative practice 8.40 Institutions of the Union	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	CASHMAN Michael (PSE)	18/02/2003

Committee for opinion	Rapporteur for opinion	Appointed
AFCO Constitutional Affairs	MAIJ-WEGGEN Hanja (PPE-DE)	20/03/2003

Key events

Date	Event	Reference	Summary
13/02/2003	Committee referral announced in Parliament		
09/09/2003	Vote in committee		Summary
09/09/2003	Committee report tabled for plenary	A5-0298/2003	
24/09/2003	Debate in Parliament		
25/09/2003	Decision by Parliament	T5-0413/2003	Summary
25/09/2003	End of procedure in Parliament		

Technical information

Procedure reference	2003/2022(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Implementation
Legal basis	Rules of Procedure EP 55 Rules of Procedure EP 148-p1

Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/19212

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, single reading		A5-0298/2003	09/09/2003	
Text adopted by Parliament, single reading		T5-0413/2003 OJ C 077 26.03.2004, p. 0265-0395 E	25/09/2003	Summary

Council of the EU

Document type	Reference	Date	Summary
Document attached to the procedure	07957/2003	31/03/2003	Summary

European Commission

Document type	Reference	Date	Summary
Document attached to the procedure	COM(2003)0216	29/04/2003	Summary

Documents of the European Parliament, Council and Commission: public access (implem. Regulation (EC) No 1049/2001)

2003/2022(INI) - 29/04/2003 - Document attached to the procedure

On 30 May 2001, the European Parliament and the Council adopted Regulation 1049/2001/EC regarding public access to European Parliament, Council and Commission Documents. This Regulation, which implements the new Article 255 of the Treaty establishing the European Community, is in line with the more general policy of transparency and information, of which it forms an intrinsic part. The policy of transparency, in turn, represents one of the pivotal features of European governance, particularly as regards the principles of openness, participation and responsibility. Other action has been taken with regard to transparency, information and relations with European citizens. The Commission has, for example, adopted minimum standards for the consultation of civil society organisations. It has continued to work towards simplifying and improving the regulatory environment and has proposed a new information and communication strategy to the Council. Regulation 1049/2002 became applicable on 3 December 2001, thereby replacing the rules on access previously introduced by the three institutions. Article 17(1) stipulates that "each institution shall publish annually a report for the preceding year including the number of cases in which the institution refused to grant access to documents, the reasons for such refusals and the number of sensitive documents not recorded in the register". The present document is the first annual report of this kind drawn up by the Commission. It is of a factual nature and takes stock of how the Regulation has been implemented during its first year in force by all Commission services, including OLAF. On the basis of the information contained in this report and in the similar reports produced by the European Parliament and the Council, the European Commission will publish a report on the implementation of the principles of the Regulation by January 2004, in accordance with Article 17(2) of the Regulation. The report is divided into three parts: 1) an overview of the action taken to implement the Regulation; 2) an analysis of the practical application of the Regulation; 3) figures on the application of the Regulation. To illustrate the trends in requests for access to Commission documents, the report also presents the data on the last three years of implementation of the Code of Conduct introduced pursuant to Decision 94/90. The data can thus be used to compare four years during which a policy of transparency towards the public has been in force. As regards the practical application of the Regulation in 2002, the report states that the year 2002 was marked by a major change in the policy of allowing access to Commission documents. The number of initial requests, which had remained relatively constant during the last three years of implementing the Code of Conduct, more than doubled during the first year of implementing Regulation 1049/2001 (the number rose from 450 requests in 2001 to 991 in 2002). The number of confirmatory requests also almost doubled. Although there are no objective factors which explain the reasons for this spectacular increase in the number of requests, it can no doubt be attributed largely to the adoption of the Regulation and the publicity surrounding it and to the opening of the publicregister. The type of requests and their origin have also changed during the past year. Some trends are worth mentioning: - an increase in requests has been particularly noticeable in the fields of competition and of customs and taxation; the percentage of requests in these areas has doubled, which means a fourfold increase in absolute figures. However, the percentage of requests concerning the internal

market has remained constant (which still means that the actual number of requests has doubled), while the percentage of requests relating to environmental policy has fallen to less than a half (the number of requests remains more or less the same in absolute figures). It is noteworthy that almost 40 % of the total number of requests falls within the remit of 4 Directorates-General, whereas the Secretariat-General deals with 15 % of the total number of requests received by the Commission; - the proportion of requests from members of the public or people who do not say that they are acting on behalf of any particular organisation has risen sharply from an average of 10% to over 30%. This is explained in part by the high number of requests submitted by e-mail, where only the requester's name is shown; - the interest shown by law firms in accessing documents has continued and remains steady at around 22-23%. Although, in percentage terms, the interest shown by law firms has remained stable, the numbers of requests from this sector has actually doubled; - in relative, requests from the academic sector have fallen sharply from 22% to 12%, which nevertheless corresponds to a slight increase in absolute figures; - many requests for access submitted to the Commission are very extensive and vague. For example, a large number of requests relate to accessing all documents on a particular subject. Requests of this kind can cover hundreds of documents. They tend to be submitted by researchers, students and law firms.

Documents of the European Parliament, Council and Commission: public access (implem. Regulation (EC) No 1049/2001)

2003/2022(INI) - 31/03/2003 - Document attached to the procedure

The Council has presented its annual report on the implementation of Regulation 1049/2001/EC regarding public access to European Parliament, Council and Commission Documents. This report was approved by the Working Party on Information at its meeting on 28 March 2003. In order to comply with Regulation 1049/2001, the Council made adaptations to its Rules of Procedure and internal instructions as well as to its administrative practices. It also ensured that the public register of Council documents complies with the requirements of the Regulation. On a practical level, although the time limit for reply has been made considerably shorter compared with the previous system, (reduced to 15 working days, with an additional 15 working days if necessary), the General Secretariat meets this time limit when processing initial applications. The time limit for confirmatory application is also met, despite the stages to be completed (examination by the Working Party on Information, then approval by Coreper and the Council). Moreover, it is only exceptionally that the time limit is extended, in particular for applications concerning a large number of documents. The Council also systematically examines the possibility of giving partial access to the documents requested, as laid down in Article 4(6) of Regulation 1049/2001. This practice ensures greater transparency in particular in legislative documents: as a general rule, the Council gives access to the content of preparatory documents regarding legislative acts even if they are still under discussion, including the positions of delegations, excluding only those parts which allow delegations to be identified. In 2002, approximately 900 000 persons logged onto the internet site of the register and consulted 4 600 000 pages. By 31 December 2002, the register referred to 375 154 documents, including all languages; the content of 168 647 of these documents could be accessed directly. Partially accessible documents bear the code P/A in the register: their content is not directly accessible, but the person consulting the register is informed that he can submit an application for access to the relevant section of the General Secretariat of the Council. By 31 December 2002, the register contained 2944 documents bearing the code P/A. As regards sensitive documents, for the period concerned a total of 250 "TRES SECRET UE/EU TOP SECRET", "SECRET UE" and "CONFIDENTIEL UE" documents were produced (no "TRES SECRET UE/EU TOP SECRET", 12 "SECRET UE" and 238 "CONFIDENTIEL UE") in the original language; 77 of these documents (no "SECRET UE" and 77 "CONFIDENTIEL UE") are referred to in the register. During the reference period, 10 330 documents were requested from the Council, following 2 491 requests for access received from the public. Compared to previous years, the number of requests has risen sharply - it practically doubled between 2001 (1 234) and 2002 (2 394) - while the number of documents requested increased very slightly (8 090 in 2001 compared with 9 317 in 2002). Several factors explain this situation: - if the number of documents directly accessible to the public increases, the number of documents requested decreases; - requests are increasingly centring on documents classified "RESTREINT UE" or on documents which are sensitive within themeaning of Regulation No 1049/2001 ("CONFIDENTIEL UE", "SECRET UE" and "TRES SECRET UE/EU TOP SECRET" documents). As far as initial applications are concerned, applicants are principally students and researchers (23,5%). The industrial and commercial sector (14,5%), pressure groups (13%) and lawyers (10,5%) are also among the best represented social and professional categories. Applicants are not required to give their identity or the reasons for their application, usually sent via email, so the profession of a significant percentage (22%) of applicants is unknown. In the case of confirmatory applications, most applicants are also students or researchers (31,8%). Journalists account for 18,2% of applicants at the confirmatory stage. As regards the geographical distribution of applicants, it should be noted that the majority of initial applications come from Belgium (27,5%), Germany (13%) and the United Kingdom (9,5%). Applications originating from third countries (outside the EU) represent 6,5% of the total. The vast majority of confirmatory applications come from the United Kingdom (40,9%). As regards the fields covered by the applications, applicants have a marked interest in justice and home affairs (24,5%). Then, starting with the most common, applications are made for documents on the internal market (14,5%), economic and monetary policy (10,5%), external relations and CFSP (8,5%) and the environment (8%). During the reference period, the General Secretariat examined 10 330 documents and made 9 114 of them available in the initial phase. Only 44 confirmatory applications were made (i. e. less than 2% of initial applications), as a result of which the Council decided to disclose an additional 89 documents (24 totally and 65 partially). As regards the number of refusals of access, the report states that out of the 10 330 documents requested during the observation period, 1 127 were refused (initial and confirmatory phases taken together), giving a rate of access (total and partial access taken together) of 89,1%. It should be noted that the practice of partial access allows the Council to increase greatly the number of documents disclosed: the rate of access of 77,8% (total access only) reaches 89,1% when documents approved for partial access are taken into account. With initial applications, the grounds for refusal most often invoked is the protection of the decision-making process, which accounts for over a quarter of refusals (27,9%), followed by the protection of the public interest as regards international relations (24%), the protection of the public interest as regards public security (22,9%) and the protection of legal advice (12,2%). In 10,3% of cases, several grounds for refusal were invoked: therefore, protection of the decision-making process is often given in conjunction with protection of the public interest as regards public security (5,3%) or international relations (4,8%). As regards confirmatory applications, protection of the decision-making process is invoked in 37,5% of cases, and in 14,3% of refusals these grounds are given in conjunction with the protection of the public interest as regards the financial, monetary or economic policy of the Community or a Member State.

Documents of the European Parliament, Council and Commission: public access (implem. Regulation (EC) No 1049/2001)

2003/2022(INI) - 25/09/2003 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution drafted by Michael CASHMAN (PES, United Kingdom) on access to documents. (Please see the summary of 09/09/03.) Parliament also criticised the European Council, which does not give full access to the documents under discussion it if they have not previously been subject to discussions in the Council of Ministers. The Commission was also criticised for giving, as a reason for refusal in 38 % of the cases, "various exceptions and unspecified exception". Parliament stated that this was unacceptable. It also felt that the Commission's interpretation of the Regulation is questionable when it systematically denies citizens access to correspondence from the Member States in the context of infringement proceedings once the proceedings have been completed or suspended. An independent assessment should be carried out on the basis of presumption of accessibility. The Commission was reminded that applications for access to documents must be considered on a case-by-case basis. Parliament went on to state that the Council differentiates between documents forwarded by the Member States acting, firstly, in their capacity as members of Council and, secondly, as individual Member States. However, European citizens must have the same or comparable rights to openness with regard to both the Union and to their own Member State if it affects European competences. Parliament calls on the Commission to submit a proposal to that end.