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REPORT FROM THE COMMISSION

**on the application in 2014 of Regulation (EC) No 1049/2001 regarding public access to
European Parliament, Council and Commission documents**

The effective implementation of the public's right to access documents held by the EU institutions is one of several means by which the EU seeks to increase transparency and accountability towards its citizens.

President Juncker's Political Guidelines for the Commission contain a strong commitment to increased transparency. This commitment has subsequently been put into practice in several ways.

In November 2014, during the first month of its mandate, the Commission gave a boost to transparency by committing to publish information about who meets its political leaders and senior officials and to provide greater access to documents relating to the negotiations for a Transatlantic Trade and Investment Partnership (TTIP) with the United States.

The new Commission also decided that Commissioners, Cabinet members and Directors General should only meet interest representatives who have signed up to the Transparency Register, a register which sheds light on those seeking to influence policy-making in the EU Institutions, the issues they follow and the human and financial resources they deploy. The Commission has also announced its intention to table a proposal for a mandatory inter-institutional Transparency Register covering the European Parliament, the European Commission and the Council.

In May 2015, the new Commission presented its Better Regulation Agenda. This comprehensive package covering the entire policy cycle will further enhance the openness and transparency of the EU decision-making process, improve the quality of new laws through better impact assessments of draft legislation and amendments, and promote constant and consistent review of existing EU laws, so that EU policies achieve their objectives in the most effective and efficient way. This transparent approach will also apply to secondary legislation, in the form of delegated and implementing acts.

The present report focusses on the right of access to documents, laid down in Article 15(3) of the Treaty on the Functioning of the European Union and Regulation 1049/2001, which is a cornerstone of the Commission's approach to transparency, supporting the Commission's proactive publication of a wealth of information on its website. This report, drawn up pursuant to Article 17(1) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹, provides information on the application of these rules by the Commission, including data on the number of access requests and the disclosure rate of documents. The report covers the year 2014² and is based on statistical data which are summarised in annex.

The statistics reflect the number of applications and not the number of documents requested. In practice, applications may cover a single document as well as entire files concerning a specific procedure containing a multitude of documents. Applications

¹ OJ L 145, 31.5.2001, p. 43

² Statistics presented in this Report are based on figures extracted from the GESTDEM application on 23 April 2015.

for access to documents which were already publicly accessible at the time of the request are not included.

The importance of the right of access to documents within the Commission's transparency policy is immediately apparent from these statistics, as the requested documents were fully or partially disclosed in 88% of cases at the initial stage, and wider, additional, access was granted in 43% of cases at the confirmatory stage.

1. Registers and Internet Sites

1.1. In 2014, 19,755 new documents were added to the register of Commission documents (see annex – table 1).

1.2. In 2014, the Commission's public register covered the following documents: COM, SEC, C, JOIN, SWD, OJ and PV series. No sensitive documents³ were created or received by the Commission in 2014, that would fall within one of these categories of documents.

1.3. The table below shows the statistics for 2014 on consultation of the Access to Documents website on EUROPA⁴.

	Unique visitors	Visits	Pages viewed
Total	28,244	32,998	44,991
Monthly average	2,354	2,750	3,749

2. Cooperation with the other Institutions subject to the Regulation

The three institutions (European Parliament, Council and Commission) held regular technical meetings, at administrative level, to share experiences, develop best practices and ensure a consistent application of the Regulation.

3. Analysis of Access Applications

3.1. In 2014, the flow of access requests at the **initial stage** decreased slightly in terms of the number of applications (6,227 in 2014 in comparison with 6,525 in 2013). The number of replies based on Regulation 1049/2001 was 5,637 in 2014 in comparison with 5,906 in 2013. (See annex – table 2).

3.2. As regards the **confirmatory stage**, the number of applications received increased significantly by 27% (300 new confirmatory applications in 2014 against 236 in 2013). 327 cases were finalised in 2014 in comparison with 252 in 2013. This constitutes a significant increase of 30%. (See annex – table 5).

³ For the purposes of Regulation No 1049/2001, sensitive documents are documents classified as "très secret/top secret", "secret" or "confidential" (see Art. 9(1) of the Regulation).

⁴ http://ec.europa.eu/transparency/access_documents/index_en.htm

- 3.3. In 2014, as in 2013, the Secretariat General received the highest proportion of initial requests (11.6%⁵ of the total). Initial requests for documents held by the Directorate-General for Competition increased from 5.1% to 7.6%, putting it at the second rank, whilst requests for documents held by the Directorate-General for Health and Consumers, occupying the third rank, decreased from 8.3% to 7.2%. Six other Directorates-General received a number of requests representing more than 5% of total requests (Agriculture and Rural Development, Enterprise and Industry, Environment, Internal Market and Services, Taxation and Customs Union, and Trade). The remaining Directorates-General account for less than 5%. (See annex – table 10).
- 3.4. The academic world proved once again to be the most active category of initial applicants, accounting for 19.8% of initial applications (in comparison with 22.1% in 2013). Contrary to the situation in 2013, it was followed by law firms with 18.3% and only then by civil society (interest representatives, NGOs) with 16% (as compared to respectively 14.5 and 16.6% in 2013) of the total number of applications. Applications by other European institutions increased significantly from 8.8% in 2013 to 12.8% in 2014. For 18.8% of the applications, the applicants did not indicate their socio-professional profile which represents, as the previous year, a significant drop (in comparison with 25.3% in 2013). (See annex – table 8).
- 3.5. The geographical breakdown of initial applications also shows similarities with previous years. The largest proportion of applications continued to originate from Belgium (29.3%). Aside from Belgium and Germany (11.9%) none of the Member States exceeded 10% of applications. These two countries are followed by Italy, France, the United Kingdom and Spain. (See annex – table 9).
4. Application of Exceptions to the Right of Access
- 4.1. In 2014, the proportion of applications that were fully refused at the initial stage decreased in comparison with the previous year (11.9% in 2014 against 14.5% in 2013). Full disclosure continued to be given in almost three out of every four cases (72.8% against 73.4% in 2013) whereas the percentage of partially disclosed documents increased in comparison with previous years, to reach 15.4% (compared to 10.7% in 2013). (See annex – table 3).
- 4.2. The number of cases where, following a confirmatory application, the Commission decided to fully disclosing previously refused documents, slightly decreased (18.8% against 20.1% in 2013). The number of cases where a refusal was fully confirmed remained almost identical (56.6% in 2014 compared to 56.1% in 2013). As to the number of cases where wider access was granted following a confirmatory application, this slightly increased (24.6% in 2014 against 23.8% in 2013). (See annex – table 6).

⁵ Percentages in the narrative part of the Report are rounded to the closest decimal.

- 4.3. The frequency of invoking the protection of the purpose of inspections, investigations and audits as the main ground for (full or partial) refusal at the initial stage, in relation to all invoked exceptions, slightly increased in comparison with the previous year (25% against 23.6% in 2013). It was the most frequently applicable exception, ahead of the exception aimed at protecting the Commission's decision-making process, which was invoked less frequently than in 2013 (22.1% in 2014 against 27.1% in 2013). (See annex – table 4).
- 4.4. The proportion of initial decisions relying on the protection of privacy and the integrity of the individual as the main ground of refusal increased significantly from 16.3% in 2013 to 21% in 2014. The application of the protection of commercial interests as an exception decreased (14.9% in 2014 against 16.1% in 2013), whilst the frequency of application of the exception based on the protection of international relations increased (7.3% in 2014 against 6.2% in 2013). (See annex – table 4).
- 4.5. The most frequently invoked ground for confirming a refusal of access was, as in previous years, the protection of the purpose of inspections, investigations and audits, even if it has decreased somewhat (33% in 2014 compared to 36.9% in 2013). The application of the protection of privacy and the integrity of the individual as an exception increased (18.1% in 2014 against 16.1% in 2013), as did the frequency of the exception based on the protection of commercial interests (16% in 2014 against 12% in 2013). (See annex – table 7).
- 4.6. Globally, the proportion of decisions invoking the protection of the Commission's decision-making process decreased from 16.1% in 2013 to 14.5% in 2014. Whilst the protection of opinions for internal use where the decision had already been taken decreased (from 5.5% in 2013 to 3.2% in 2014), this was not the case for on-going decision-making processes (which represented 11.4% in 2014 compared to 10.6% in 2013). The protection of court proceedings and legal advice was invoked more frequently than in the previous year (10.3% in 2014 against 6.9% in 2013), whilst the frequency of application of the exception based on the protection of the financial, monetary or economic policy decreased from 7.4% in 2013 to 4.6% in 2014.

5. Complaints to the European Ombudsman

- 5.1. In 2014 the Ombudsman closed the following 20 complaints against the Commission's handling of requests for access to documents:⁶

8 cases closed with a critical and/or a further remark:

- 1743/2013/TN
- 1869/2013/AN
- 2275/2013/ANA

⁶ For details on each case refer to <http://www.ombudsman.europa.eu/en/cases/home.faces>.

- 216/2009/TN
- 636/2012/DK
- 1076/2012/DK
- 1392/2012/DK
- 257/2013/OV

12 cases closed without further action:

- 2011/2232
- 705/2012/BEH
- 145/2013/ANA
- 407/2013/ANA
- 2290/2013/MMN
- 2406/2013/EIS
- 176/2014/EIS
- 854/2014/SID
- 1034/2014/EIS
- 1144/2014/BEH
- 1145/2014/FOR
- 1629/2014/CK

5.2. In the course of the year the Ombudsman opened 30 new inquiries where access to documents was either the main or a subsidiary part of the complaint.

6. Judicial Review

6.1. As in previous years, significant new case law was delivered in 2014.

6.2. The Court of Justice handed down two judgments on appeal in the following two cases:

- C-365/12 P - European Commission v EnBW Energie Baden-Württemberg AG
(<http://curia.europa.eu/juris/document/document.jsf?text=&docid=160883&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=364447>)
- C-127/13 P - Guido Strack v European Commission
(<http://curia.europa.eu/juris/document/document.jsf?docid=159344&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=364763>)

6.3. As for the General Court, it handed down eight judgments related to the right of access to documents:

- T-181/10 - Reagens SpA v European Commission
(<http://curia.europa.eu/juris/document/document.jsf?text=&docid=161566&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=365084>)

- T-447/11 - Lian Catinis v European Commission
(<http://curia.europa.eu/juris/document/document.jsf?text=&docid=162588&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=365011>)
- T-516/11 - MasterCard, Inc., MasterCard International, Inc. and MasterCard Europe v European Commission
(<http://curia.europa.eu/juris/document/document.jsf?docid=158833&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=365325>)
- T-669/11 - Darius Nicolai Spirlea and Mihaela Spirlea v European Commission
(<http://curia.europa.eu/juris/document/document.jsf?text=&docid=159482&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=365393>)
- T-306/12 - Darius Nicolai Spirlea and Mihaela Spirlea v European Commission
(<http://curia.europa.eu/juris/document/document.jsf?text=&docid=159472&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=365451>)
- T-534/11 - Schenker AG v European Commission
(<http://curia.europa.eu/juris/document/document.jsf?text=&docid=160027&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=365564>)
- T-476/12 - Saint-Gobain Glass Deutschland GmbH v European Commission
(<http://curia.europa.eu/juris/document/document.jsf?text=&docid=162032&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=365610>)
- T-304/13 P - Chris van der Aat and Others v European Commission
(<http://curia.europa.eu/juris/document/document.jsf?text=&docid=162187&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=365693>)

6.4. In one case the Court dismissed the action as it was manifestly lacking any foundation in law:

- T-603/11 - Ecologistas en Acción-CODA v European Commission
(<http://curia.europa.eu/juris/document/document.jsf?docid=153216&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=365757>)

6.5. In the following case, the Court found that there was no need to adjudge:

- T-511/10 - Evropaïki Dynamiki v Commission
(<http://curia.europa.eu/juris/document/document.jsf?text=&docid=82281&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=365870>)
- 6.6. 9 new cases were brought before the General Court against Commission decisions under Regulation (EC) No 1049/2001.
- T-128/14 - Daimler v Commission
(<http://curia.europa.eu/juris/document/document.jsf?text=&docid=152473&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=366122>)
 - T-239/14 - Monard v Commission
(<http://curia.europa.eu/juris/document/document.jsf?text=&docid=154810&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=366208>)
 - T-363/14 - Secolux v Commission
(<http://curia.europa.eu/juris/document/document.jsf?text=&docid=156103&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=366258>)
 - T-424/14 - ClientEarth v Commission
(<http://curia.europa.eu/juris/document/document.jsf?text=&docid=157459&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=366342>)
 - T-425/14 - ClientEarth v Commission
(<http://curia.europa.eu/juris/document/document.jsf?text=&docid=157460&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=366416>)
 - T-498/14 - Deutsche Umwelthilfe v Commission
(<http://curia.europa.eu/juris/document/document.jsf?text=&docid=157953&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=366482>)
 - T-755/14 - Herbert Smith Freehills v Commission
(<http://curia.europa.eu/juris/document/document.jsf?text=&docid=161783&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=366553>)
 - T-796/14 - Philip Morris v Commission
(<http://curia.europa.eu/juris/document/document.jsf?text=&docid=162349&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=366652>)

- T-800/14 - Philip Morris v Commission
(<http://curia.europa.eu/juris/document/document.jsf?text=&docid=162360&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=366717>)

6.7. Compared to 2013, where five new appeals had been brought before the Court of Justice, only one such new appeal has been brought against a judgment of the General Court.

- C-562/14 P - Sweden v Commission
(<http://curia.europa.eu/juris/document/document.jsf?text=&docid=161659&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=366774>)

7. Conclusions

The new Commission led by President Juncker is committed to enhanced transparency. This commitment is being delivered through publication of information on who meets its political leaders and senior officials; greater access to documents relating to the negotiations for a Transatlantic Trade and Investment Partnership (TTIP) with the United States; revision of the Transparency Register; and adoption of the Better Regulation Agenda.

With regard to the right of access to documents, the new Commission provides extensive publication of information and documents on its legislative and non-legislative activities. Furthermore, the right to access documents upon request, subject to specific, limited exceptions, is provided by the Treaties and is an important instrument through which the Commission delivers on its commitment to transparency. The Commission's objective is to respond to such requests in the most timely and resource-efficient manner possible.

If the number of access-to-documents requests at the initial stage slightly decreased from 6,525 in 2013 to 6,227 in 2014, the number of confirmatory applications continued to increase for the seventh year in a row, recording a significant 27% increase, from 236 in 2013 to 300 in 2014. This demonstrates that citizens are making more and more use of their legal right to appeal the initial decision taken by the Commission.

The Commission remains by far the institution handling the largest number of both initial and confirmatory requests pursuant to Regulation 1049/2001. The Commission handles more than twice as many requests as the Council and the European Parliament together.

The volume of access requests and the high rate of disclosure of documents show that the right of access to documents is actively used by European citizens and has resulted in a large number of documents being made available in addition to the extensive documentation already available on the Commission's website.

