

Fiche 2

Access to briefings

Main issues:

- Briefings, just like any other categories of documents, are not exempt from the scope of Regulation 1049/2001.
- There is no general presumption of non-disclosure regarding specific parts of briefings, such as Speaking or Defensive points, but a case-by-case assessment is necessary.
- If a briefing is important, not purely internal (within a specific unit) and not short-lived, its final version should be registered in ARES and its possible disclosure assessed under Regulation 1049/2001. Briefings provided by DGs/services to a Commissioner are, as a rule, to be registered in ARES.
- The registration of briefings in ARES and, the use of BASIS (Briefings and Speeches Information System) make them easily identifiable.

Current administrative practice:

The status of a briefing as a Commission-internal document is not sufficient ground to justify the refusal of access. Instead, it is necessary to assess whether there is a genuine need for protection, and whether this applies to the whole document. Unless a specific exception of Article 4 of Regulation 1049/2001 applies, access is to be granted.

The timing of the requested access is important: if the briefing relates to a matter on which the Commission has not yet taken a position and the release would seriously undermine the possibility to do so, the application of the exception under Article 4(3), first subparagraph pertaining to the ongoing decision-making process should be duly considered.

Briefings (or parts thereof, in particular those reflecting views and opinions for internal use as part of deliberations and preliminary consultations within the Commission) can in some cases be refused under Article 4(3), second subparagraph even after finalisation of the specific decision-making process to which they pertain, but in that case a continued risk of serious harm to the Commission's decision-making process, in a general sense, must be demonstrated.

Likewise, if other specific exceptions under Article 4 of Regulation 1049/2001 apply (such as the protection of international relations in cases where briefings relate to the negotiation of international agreements), access has to be refused if there is a real and non-hypothetical risk of harm to the interest protected.

The possibility of granting partial access (for example, to factual and background information contained in the briefings) should always be considered, regardless of the timing of the requested access.

Case-law:

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Reference documents/links:

- Examples of confirmatory decisions and a summary of relevant case-law are available on the Commission's access-to-documents webpages on *My Intracomm*¹;
- The full text of judgments of the EU Courts can be consulted on the website of the ECJ: www.curia.eu

February 2016

¹ <https://myintracomm.ec.europa.eu/sg/docinter/Pages/tools.aspx>.