



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate B - Institutional and Administrative Policies
SG.B.4 - Transparency

Brussels,
SG.DSG2.B4/MK/bb -

NOTE TO HEADS OF UNIT RESPONSIBLE FOR ACCESS-TO-DOCUMENTS

Subject: Notification of negative replies under Regulation 1049/2001

Most of the requests for access to documents under Regulation 1049/2001 are made via email. The same applies to the transmission of our initial and confirmatory replies.

For several reasons, a more structured approach to the notification of Commission replies should be followed in the future. First of all, the European Commission has been increasingly confronted with cases where applicants seem to hide behind false identities. Secondly, the transmission of formal replies only by email clearly does not provide for sufficient legal certainty as regards the respect of legal deadlines (for lodging a confirmatory request or an appeal to the Court). Dismissing cases as inadmissible for failure to respect the legal deadlines is therefore almost impossible. Thirdly, there is a need to assess whether applications originate from third countries.¹

Against this background and having consulted the Legal Service, it has been decided to apply a more systematic framework in this area. This means that

- The electronic form for access-to-documents applications on the Internet² will be adapted in order to make the indication of a postal address compulsory.
- By the same token, the Commission services should systematically ask for a postal address if they receive direct requests (i.e. if the applicant is not using the

¹ This is relevant from a data protection point of view and with regard to the applicable redress

² <http://ec.europa.eu/transparency/regdoc/index.cfm?fuseaction=fmb&language=en>

form available on the Internet). A standard wording for a reply in these cases is suggested in the annex.

- Finally, all negative replies (full or partial refusal of access as well as "devoid of purpose" cases) have to be sent by registered mail with acknowledgement of receipt. This is the only reliable method for getting a proof of delivery that would stand in Court. Nevertheless, advanced copies can and should in addition be sent to an email address where available.

Whenever a confirmatory request is lodged with the SG, the DG responsible for the initial reply will be requested to transmit the related acknowledgment receipt so that the admissibility of the confirmatory reply can be assessed.

This new structure should be applied across all Commission departments as of **1 April 2014**.



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