



EUROPEAN COMMISSION  
SECRETARIAT-GENERAL

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

## GUIDANCE NOTE<sup>1</sup>

### ACCESS TO DOCUMENTS RELATING TO *TRILOGUES*

#### 1. BACKGROUND

The Commission has been receiving an increasing number of requests under Regulation 1049/2001 for access to documents relating to *trilogue* meetings.

These requests have covered both documents drafted by the Commission for internal use<sup>2</sup> and documents received from the other institutions<sup>3</sup>. In some cases, the same or similar requests were also lodged with the Parliament and the Council.

In order to ensure coherence in the replies given by the three institutions, the access-to-documents units of the Council, the European Parliament and the Commission have agreed on the annexed common way of consulting the other institutions in case of requests for *trilogue*-related documents.

This common way supports the 2002 Memorandum of Understanding<sup>4</sup>, by specifying that, as regards *trilogue*-related documents:

- each institution will consult the other two institutions, both on documents drafted by the latter and on the release of the positions of the other institutions reflected in the documents drafted or held by it;
- each institution will take into account the observations made by the other institutions at the initial stage, and decide accordingly to withhold parts of the documents if the other institutions provide valid grounds for refusal under Article 4 of Regulation 1049/2001. At the confirmatory stage, if an institution decides to

<sup>1</sup> Article 10 of the Detailed Rules of Application of Regulation 1049/2001, which provides that *[t]he Secretariat-General shall ensure coordination and uniform implementation of these rules by Commission Directorates-General and departments. To this end, it shall provide all necessary advice and guidelines.*

<sup>2</sup> Meeting reports, briefings, "GRI fiches". Especially the latter two types of documents are likely to include, besides elements reflecting the position as expressed by the Commission in the *trilogue* meetings, also the Commission's proposed position ("line to take") on specific points.

<sup>3</sup> In particular: "*four-column tables*" drafted by the Council, reflecting the state of play of the inter-institutional discussions, including the positions expressed by the three institutions.

<sup>4</sup> Memorandum of Understanding, signed on 9 July 2002, between the services of the European Parliament, the Council and the Commission on the application of Article 4 (4) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

make *trilogue*-related documents available to the public, it will add a disclaimer which underlines the internal and unofficial character of the document.

This guidance note consolidates the practice followed until now, in line with the above-mentioned agreement.

The Commission has so far, following a specific analysis of the documents requested in each case, refused access to all the positions or proposed positions of the three institutions, to the extent that these were not yet in the public domain and that the co-legislators had not yet reached a formal agreement<sup>5</sup>. It has argued that the undisclosed parts fell under the exception of Article 4(3), first subparagraph of Regulation 1049/2001 (protection of the decision-making process), at least as long as the decision-making process was ongoing. Indeed, if the release of the position of one of the institutions would seriously undermine the (inter-institutional) decision-making process, it can be assumed that the same would apply to the release of the positions of the other institutions.

An example of a confirmatory decision drafted along these lines is annexed. A similar approach should be followed for any future requests for access to documents, as detailed below.

## **2. INITIAL REQUESTS FOR ACCESS TO *TRILOGUE*-RELATED DOCUMENTS**

Commission services should undertake the following steps when assessing an initial request for access to *trilogue*-related documents, and regardless of whether the related decision-making procedure is still open or closed.

1. Verify internally (within the DG, where necessary in consultation with the unit in the SG dealing with the *trilogues* concerned) whether the Commission's position and/or proposed position ("line to take") as reflected in the documents has to be protected or can be released further to the exceptions of Article 4 of Regulation 1049/2001<sup>6</sup>;
2. Systematically consult<sup>7</sup>, pursuant to Article 4(4) of Regulation 1049/2001, the other institutions on the possible disclosure of those respective (parts of the) documents drafted by the latter or reflecting their positions, to the extent that these positions have not yet been made public. The institutions have agreed to provide a reaction within five working days;
3. In case none of the three institutions object to disclosure of the documents: release these by including the following disclaimer:

***"This [document] was drawn up for internal use under the responsibility of the relevant services of the [...]. It reflects solely the author's interpretation of the***

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<sup>5</sup> The formal agreement of the two co-legislators implies that from that date on, the text adopted will not change anymore.

<sup>6</sup> It is possible that a different risk assessment will be made for the release of the position already expressed by the Commission than for the Commission's proposed position ("line to take").

<sup>7</sup> By e-mail to: [register@europarl.europa.eu](mailto:register@europarl.europa.eu) and [access@consilium.europa.eu](mailto:access@consilium.europa.eu). Services are encouraged to refer to the deadline of five days in their consultation e-mail.

*interventions made and does not set out any official position of the institutions involved in the discussions."*

4. In case of opposition, by one or more institutions, to the release of their position(s) on the grounds of Article 4(3), first subparagraph of Regulation 1049/2001: withhold **all** parts of the documents which reflect the positions of any of the institution(s) which are not yet public, so as to ensure a legally coherent reasoning for refusal.
5. As regards the proposed Commission services position, which constitutes an "opinion for internal use as part of deliberations and preliminary consultations within the institution":
  - Consider applying, in principle, the exception of Article 4(3), first subparagraph whenever access to the positions of the institutions is also refused on this ground;
  - Consider applying Article 4(3), second paragraph in cases where the (inter-institutional) decision-making procedure is finalised<sup>8</sup>, provided that the (respective parts of the) documents reflect opinions for internal use as part of preliminary deliberations and consultations within the institution, and a serious risk to the decision-making process is identified at that stage (e.g. when the positions expressed or particularly sensitive or of a particularly wide scope, or when a real and serious danger for other files can be established).

### **3. CONFIRMATORY REQUESTS FOR ACCESS TO *TRILOGUE*-RELATED DOCUMENTS**

The following steps should be followed when assessing a confirmatory request for access to *trilogue*-related documents, and regardless of whether the related decision-making procedure is still open or closed.

1. Re-consult<sup>7</sup> those institutions<sup>9</sup> which initially expressed their opposition to (full or partial) disclosure of the documents, so as to assess whether their position has changed. The institutions have agreed to provide a reaction within five working days;
2. In case none of the three institutions object to disclosure of the documents: release these by including the following disclaimer:

***"This [document] was drawn up for internal use under the responsibility of the relevant services of the [...]. It reflects solely the author's interpretation of the interventions made and does not set out any official position of the institutions involved in the discussions"***.

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<sup>8</sup> This means once the two co-legislators have formally agreed to the text.

<sup>9</sup> Including where relevant the Commission service responsible for the initial reply and where appropriate SG/F1.

3. In case of continued opposition, by one or more institutions, to disclosure on the grounds of Article 4(3), first subparagraph of Regulation 1049/2001:
  - Refusing access requires demonstrating that the disclosure would concretely and seriously put at risk the inter-institutional negotiations (if still ongoing) and that the content of the (parts of the) documents to which access is refused is particularly sensitive;
  - Consider the possibility of overruling the other institution(s) where the grounds invoked by the institution(s) to refuse access do not seem *prima facie* valid or where there is an overriding public interest in disclosure.
  
4. As regards the proposed Commission services position, which constitutes an "opinion for internal use as part of deliberations and preliminary consultations within the institution":
  - Consider applying the exception of Article 4(3), first subparagraph whenever access to the positions of the institutions is also refused on this ground, provided the legislative process is still on-going;
  - Consider whether access must be refused even after the decision-making process has been finalised, based on Article 4(3), second subparagraph of Regulation 1049/2001, provided that the (respective parts of the) documents reflect opinions for internal use as part of preliminary deliberations and consultations within the institution, and serious risk to the decision-making process can be established (e.g. when the positions expressed are particularly sensitive or of a particularly wide scope, or when a real and serious danger for other files can be established).

**REQUESTS FOR ACCESS TO "TRILOGUE DOCUMENTS": CONSULTATION  
BETWEEN THE SERVICES OF THE EUROPEAN PARLIAMENT, THE  
COUNCIL AND THE COMMISSION**

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In case of requests for access to "trilogue documents", i.e. documents identified by an institution as relating to a trilogue, the respective services responsible for implementing the Memorandum of Understanding<sup>10</sup> have, within the framework of that Memorandum, agreed on the following:

1. The relevant services of the institutions consult each other on requests for access to "trilogue documents", whenever these documents reflect the views/positions of the other institutions, in particular when these views/positions have not yet been made public by the institutions concerned.
2. The services of the institutions consulted examine the parts of the "trilogue documents" requested which reflect their views/positions on the basis of the relevant provisions of Regulation 1049/2001 and transmit their observations to the consulting institution as quickly as possible and at the latest within 5 working days.
3. The services of the consulting institution take the observations made by the services of the consulted institutions duly into account when replying to initial requests for access to "trilogue documents", and may accordingly decide to withhold those parts of the documents, which the services of the consulted institutions consider as being covered by the exceptions to the right of access foreseen in Article 4 of Regulation 1049/2001 and to the extent that the latter provide valid grounds for refusal under this provision.
4. The services of the institutions consult each other on confirmatory requests for access to trilogue documents and handle such requests with due consideration to the relevant provisions of Regulation 1049/2001 and the state of play of the interinstitutional negotiations.

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<sup>10</sup> Memorandum of Understanding, signed on 9 July 2002, between the services of the European Parliament, the Council and the Commission on the application of Article 4 (4) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

5. If the services of one of the institutions eventually decide to make trilogue document(s) held by it available to the public, it should, as appropriate, accompany the response to the applicant with a disclaimer which underlines the internal and non-official character of the document(s).

This disclaimer could be worded as follows [where applicable]:

*"This [document] was drawn up for internal use under the responsibility of the relevant services of the [...]. It reflects solely the author's interpretation of the interventions made and does not set out any official position of the institutions involved in the discussions."*

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EUROPEAN COMMISSION

SECRETARIAT-GENERAL

The Secretary General

Brussels,  
SG.B5/MF/rc – sg.dsg1.b.5(2013) 3469816

[Name and address of the applicant have been redacted]

**Decision of the Secretary General pursuant to Article 4 of the Implementing Rules to Regulation (EC) N° 1049/2001<sup>11</sup>**

**Subject: Your confirmatory application for access to documents under Regulation N° 1049/2001 - Gestdem 2013/3238**

Dear [redacted],

I refer to your letter of 6 September 2013, registered on the same day, by which you lodge a confirmatory application in accordance with Article 7(2) of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>12</sup> (hereafter Regulation 1049/2001).

**1. SCOPE OF YOUR REQUEST**

In your initial application of 14 June 2013, you requested access to *the documents containing the information discussed during the trilogue meetings that have taken place with regard to the adoption of the 7<sup>th</sup> Environment Action Programme; the proposal for a decision of the European Parliament and of the Council on a General Union Environment Action Programme to 2020 "Living well, within the limits of our planet", including "the preparatory documents for the meetings as well as the documents received by the Commission in relation to the matter discussed" as well as "the minutes of these meetings the Commission uses to report back.*

The Commission has identified the following ten documents, drafted by the Commission services, relating to the Seventh Environmental Action programme (EAP) as falling within the scope of your request:

1. Report prepared after the first informal trilogue meeting with the European Parliament and the Council – 23 May 2013;
2. Report prepared after the second informal trilogue meeting with the European Parliament and the Council – 6 June 2013;

<sup>11</sup> Official Journal L 345 of 29.12.2001, p. 94.

<sup>12</sup> Official Journal L145, 31.05.2001 p.43.

3. Report prepared after the first informal trilogue meeting with the European Parliament and the Council – 19 June 2013;
4. Document received on 7 June 2013 from the Irish Presidency summarizing the state of play in relation to the issues that remained open after the second trilogue meeting;
5. Position paper "Businesseurope views on the 7th Environment Action Programme in view of the trilogue negotiations" received on 30 May 2013 by email from Businesseurope;
6. "4-column document" prepared by the Council General Secretariat in view of the informal trilogue meeting with the European Parliament and the Council – 31 May 2013;
7. "4-column document" prepared by the Council General Secretariat in view of the informal trilogue meeting with the European Parliament and the Council – 21 May 2013;
8. "4-column document" prepared by the Council General Secretariat in view of the informal trilogue meeting with the European Parliament and the Council - 17 June 2013;
9. "GRI fiche" prepared in view of the meeting of the Inter-institutional Relations Group (GRI) that ensures the coordination of all Commission activities in the field of Inter-institutional relations – 15 May 2013;
10. "GRI fiche" prepared in view of the meeting of the Inter-institutional Relations Group (GRI) that ensures the coordination of all Commission activities in the field of Inter-institutional relations – 13 June 2013;

In its initial reply of 19 August 2013, the Directorate General for the Environment (DG ENV):

- granted full access to documents 4 and 5.
- granted partial access to documents 1-3, by redacting those parts reflecting the detailed discussions between the Commission, the Council and the Parliament based on the exception of Article 4(3), second paragraph of Regulation 1049/2001;
- refused access to documents 6-8, based on the exception of Article 4(3), first paragraph of Regulation 1049/2001;
- refused access to documents 9-10, based on the exception of Article 4(3), second paragraph of Regulation 1049/2001.

Through your confirmatory application you request a review of this position and ask for full access to the documents requested. You support your request with detailed arguments relating to the respective categories of documents refused.

As the Council has in the meantime fully disclosed documents 6-8<sup>13</sup>, these documents are considered to fall outside the scope of your request.

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<sup>13</sup> Documents 9689/13, 10381/13 and 11071/13, available through the Council Register.

The sections below will therefore only assess your request for access to **documents 1-3 and 9-10**. The analysis will be limited to those parts of the documents which do not reflect any information that is already public.

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001**

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General conducts an independent review of the reply given by the Directorate-General concerned at the initial stage.

As part of this review, the Commission has consulted the Parliament and the Council, in accordance with Article 4(4) of Regulation 1049/2001, on the possible disclosure of the respective positions of these institutions, to the extent that these had not already been made public.

In response to this consultation:

- the Council opposed itself to the disclosure of those parts of the documents which reflect the Council's position or that of individual Member States, as long as the inter-institutional decision-making process has not been finalised. The Council specified that disclosure of these parts of the documents at this stage would seriously undermine the decision-making process protected by Article 4(3), first paragraph of Regulation 1049/2001. However, the Council agreed in principle to disclosure once the inter-institutional decision-making process is finalised;
- The Parliament agreed to the disclosure of all five documents requested, following consultation of the Parliament's Environment Committee (ENVI), which did not formulate any objections to such disclosure. However, the Parliament did not put forward any reasoning supporting its opinion.

Following the Commission's independent assessment, and taking into account the positions expressed by the European Parliament and the Council, I regret to inform you that only a partial access can be granted to the documents requested, for the reasons set out below.

This partial access reflects a restrictive interpretation of the exceptions of Article 4 of Regulation 1049/2001, in line with the applicable legislation and the case law of the European courts, to which you refer in your application.

### **2.1. Undisclosed parts of documents 1-3: protection of the decision-making process**

Article 4 (3), first subparagraph of Regulation 1049/2001 provides that:

*[a]ccess to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.*

Documents 1-3 are the meeting reports drafted by the Commission services after the first, second and third *trilogues*. Every report contains, respectively, the following sections:

- Participants (referred to hereafter as "section a");
- Highlights ("section b");
- Detailed Discussion ("section c");

- Next Steps ("section d").

As sections a, b and d were already provided to you at the stage of your initial application, these sections are considered to fall outside the scope of your request.

Sections c of the reports, to which you request access, reflect the detailed discussions having taken place between the Commission, the Council and the Parliament in each trilogue meeting.

As indicated above, the Council gave a negative opinion on disclosure of these parts of the documents. Taking into account this opinion, and the absence of any reasoning underpinning the Parliament's positive opinion on disclosure, I regret to inform you that no further access can be granted to those parts of documents 1-3 which have not already been made public through the reply to your initial application or through other means, as such disclosure would seriously undermine the decision-making process protected by Article 4(3), first paragraph of Regulation 1049/2001, in three, closely connected, ways:

- the trilogue meetings took place in a sphere of confidence and trust, with the aim of finding a ground for compromise between the respective institutions. As long as the inter-institutional decision-making process has not been finalised, disclosure, to the public, of the positions expressed in the trilogue meetings by the representatives from the Commission, the Council and the Parliament would entail a reasonably foreseeable and specific risk of putting the inter-institutional decision-making process under external pressure, thereby jeopardising the delicate compromises reached.

Such disclosure would therefore seriously undermine the ongoing decision-making process protected by Article 4(3), first paragraph of Regulation 1049/2001;

- parts of the documents reflect the position of individual representatives or delegations, or enable the latter to be inferred from the wording used. In the framework of preliminary discussions and negotiations within the trilogue meetings, it is essential that representatives and delegations of the three institutions are able to express their views freely so that compromise solutions can be found and progress can be achieved on delicate questions. Disclosure at this stage of those parts of the documents, which allow identification of the delegations that have adopted positions on the subject still under discussion, would jeopardise this process. Indeed, such disclosure would seriously narrow delegations' room for manoeuvre to review their positions in the light of arguments put forward during discussion. Such disclosure would therefore seriously undermine the ongoing decision-making process protected by Article 4(3), first paragraph of Regulation 1049/2001;
- the meeting reports reflect interpretations by Commission staff of positions expressed by the other institutions' delegations, in the framework of meetings that were not open to the public. The reports were drafted for internal, Commission, purposes only, in the expectation that they would remain confidential. For this reason, they were never submitted for approval to the other two institutions. If the Commission were to disclose these documents unilaterally, in contradiction with the negative position on disclosure expressed by the Council, this would have the effect of seriously prejudicing the climate of mutual confidence necessary for the effectiveness of the Commission's actions and leverage in its inter-institutional negotiations with the Council and the Parliament. This, in turn, would seriously

undermine the Commission's and the inter-institutional decision-making process protected by Article 4(3), first paragraph of Regulation 1049/2001.

The Commission has taken note of the fact that "feedback notes" of the Parliament, which report on the results of the *trilogue* meetings, were already disclosed to you following an application for access to documents addressed to the Parliament.

However, a detailed comparison of the latter documents with the Commission's *trilogue* reports reveals that both types of documents are in fact different in scope and degree of detail. Indeed, whilst the Parliament's feedback notes only reflect the final outcome of the discussions and not the content of the discussions as such, the Commission's *trilogue* reports report in detail about the positions of the respective institutions and their individual representatives and delegations.

For the reasons set out above, and having regard to the fact that the decision-making process has not yet been finalised, access is refused, pursuant to the exception of Article 4(3), first paragraph of Regulation 1049/2001, to those parts of Documents 1-3 which were not already disclosed to you at initial stage, or which otherwise do not reflect any content which is already public.

## **2.2. Undisclosed parts of documents 9-10: protection of the decision-making process, opinions for internal use and the privacy and integrity of the individual**

Documents 9-10 are fiches drafted by Commission staff, in preparation of specific meetings of the Commission's internal Inter-institutional Relations Group (GRI).

The documents analyse the negotiation positions of the Council and the Parliament and suggest the negotiation position that the Commission should take in the *trilogue* meetings.

The documents were clearly drawn up exclusively for internal purposes, as part of consultations and preliminary deliberations within the Commission.

They contain four types of information:

- titles and factual information such as documentary references, dates of the successive stages in the decision-making process, and participants' names. These elements are disclosed to you, as none of the exceptions of Article 4 of Regulation 1049/2001 applies to these elements;
- a summary of the positions expressed by the Council and Parliament representatives during the negotiations;
- opinions of Commission staff on the Council and Parliament positions, and on the line to take by the Commission in the *trilogue* meetings;
- names of the officials who authored the notes.

The following sections deal with the latter three elements.

### *2.2.1. Elements reflecting the positions of the Commission, the Council and the Parliament: protection of the decision-making process*

Following a detailed analysis of the documents, and taking into account the negative position expressed by the Council pursuant to Article 4(4) and the absence of any reasoning underpinning the positive opinion of the Parliament, the Commission considers that disclosure of those parts of the documents which reflect the positions of the

Commission, the Council and the Parliament would seriously undermine the inter-institutional decision-making process in two, closely connected, ways:

- the inter-institutional negotiation process is still ongoing, as the Parliament and the Council have not yet adopted their final positions. For these negotiations to have a successful outcome, it is essential that representatives' and delegations' room for manoeuvre is not restricted by the disclosure of positions which the delegations had expressed freely and in the legitimate expectation that these would not be made public. Under these circumstances, disclosure of positions taken by representatives and delegations in preparatory bodies would expose the negotiations within the Council and the Parliament and between the three institutions to external pressure. This, in turn, would seriously undermine the decision-making process protected by Article 4(3), first paragraph of Regulation 1049/2001;
- the documents were never submitted to the Council or the Parliament for approval, and hence do not necessarily reflect the views of these institutions. Disclosure of the respective parts of the documents would seriously undermine mutual trust between the institutions, which is essential to the effectiveness of the Commission's inter-institutional role in the ongoing negotiations and, hence, the decision-making process protected by Article 4(3), first paragraph of Regulation 1049/2001.

Those parts of the documents reflecting the positions of the Commission, the Council and the Parliament cannot, therefore, be disclosed pursuant to Article 4(3), first paragraph of Regulation 1049/2001.

#### *2.2.2. Opinions of Commission staff for internal use: protection of the decision-making process*

The remaining parts of documents 9-10 consist of opinions of Commission staff on the line to take in the trilogue meetings. These opinions were expressed for internal use, in preparation of preliminary deliberations within the Commission's Inter-institutional Affairs Group, and under the legitimate expectation that they would not be made public.

They contain unfiltered, unpolished views of Commission staff regarding the other institutions' negotiating stance, which were drafted in the legitimate expectation that they would not be made public, at least while the decision-making process is ongoing. There is a real and non-hypothetical risk that disclosure of the respective parts of the documents would seriously undermine the trust of the other institutions in the Commission and, ultimately, the Commission's position and leverage in the ongoing negotiations.

For the reasons set out above, the opinions for internal use appearing in documents 9-10 cannot be disclosed to you, as such disclosure would seriously undermine the decision-making process protected by the exception of Article 4(3), first paragraph of Regulation (EC) No 1049/2001.

In your confirmatory application you indicate, with regard to documents 9-10, that "the Commission could have partially disclosed the fiches in case some information should have remained confidential". In line with this suggestion and with the provisions of Regulation 1049/2001, the partial disclosure which is granted to you is limited to those parts of the documents which do not fall under any of the exceptions of Article 4 of Regulation 1049/2001 and are, therefore, not confidential.

#### *2.2.3. Names of the authors of the fiches: protection of the privacy and integrity of the individual*

Documents 9-10 contain the names of the Commission staff who drafted the notes.

Article 4(1) (b) of Regulation 1049/2001 provides that access to documents is refused where disclosure would *undermine the protection of [...] privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.*

The names of Commission staff mentioned in the documents constitute personal data in the meaning of Article 2(a) of the Data Protection Regulation<sup>14</sup>. In its judgment in the *Bavarian Lager* case, the Court of Justice has ruled that, when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable. This means that the necessity of disclosing the personal data must be established and that there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced. These conditions are cumulative.

Given that you have expressed no need for, nor a particular interest in obtaining these names, they have been redacted from the documents pursuant to Article 4(1) (b) of Regulation 1049/2001, so as to protect the privacy and the integrity of the individuals concerned.

### **2.3. No overriding public interest**

Pursuant to Article 4(3) of Regulation 1049/2001, the exceptions to the right of access must be waived if there is an overriding public interest in disclosing the (parts of the) documents requested. In order for an overriding public interest in disclosure to exist, this interest, firstly, has to be public and, secondly, overriding, i.e. in this case it must outweigh the interests protected by Article 4(3).

In your confirmatory application you state:

- with regard to documents 1-3, that *the process leading up to the adoption of the 7<sup>th</sup> Environmental Action Programme (EAP) is a legislative one, and that according to the case law of the European Court of Justice and Article 4 of Regulation 1367/2006, wider access should be granted in such a case.* To back up your arguments you invoke, besides the *Turco* judgment, Article 12(2) of Regulation 1049/2001, Article 4 of Regulation 1367/2006 as well as national practice.

You allege furthermore that the confidentiality of the trilogue procedure, which is *not provided by the EU Treaties*, is in contradiction with *Articles 1, 6(1) and 11 and 15 of the Treaty on European Union, as well as Article 42 of the Charter of Fundamental Rights and Freedoms, which make clear that the institutions must act as openly and transparently as possible to the citizens.*

- with regard to documents 9-10, with reference to the *Turco* judgment, that *the public must know what policy options the Commission considers and privileges when discussing a decision.*

I deduce from the wording of your arguments that these aim to demonstrate that transparency, as guaranteed respectively by the Treaties, the Fundamental Rights Charter, Regulation 1049/2001 and the case law of the European Courts, constitutes an overriding public interest in disclosing the documents requested.

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<sup>14</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, Official Journal L 8 of 12.1.2001

Whilst I certainly agree with you that the transparency of the decision-making process constitutes a public interest worth protecting, I consider that the public interest protected by Article 4(3), first indent of Regulation 1049/2001 outweighs the public interest served by disclosing the (parts of the) documents requested in this case.

The fact that the public already has full access to the Commission proposal, the amendments proposed by the Parliament's Environment Committee, the policy options considered by the Commission as reflected in the detailed and publicly available Impact Assessment accompanying the Commission's proposal<sup>15</sup>, only reinforces this conclusion.

Furthermore, you already obtained, at initial stage, copies of:

- the summary and main results of the *trilogue* meetings, as reflected in the "Highlights" section of each of *trilogue* report (documents 1-3), and
- the Council's suggested position following Coreper, as reflected in the Council's "four-column documents".

In light of this, it is not clear to what extent disclosure of the redacted parts of the documents requested would add much to your understanding of the process leading up to the (future) adoption of the Seventh EAP.

Furthermore, each of the three institutions has in principle agreed to release the documents requested by you once the inter-institutional decision-making process has been finalised, thereby fully satisfying your request for access and your information needs as regards the different steps having formed part of the inter-institutional decision-making process.

This conclusion is supported by the *Turco* judgment, to which you refer in your confirmatory application. In that ruling, the Court stipulated that "openness in that respect contributes to strengthening democracy by allowing citizens to scrutinise all the information *which has formed the basis* [emphasis added] of a legislative act."

Indeed, in accordance with the principles of representative democracy and democratic control (Article 10(1) TEU), citizens are represented by the institutions of the Union and not directly, and the scrutiny of the result of inter-institutional negotiations should mainly occur *ex post* and not during the negotiation process. These principles should guide the interpretation of Regulation 1049/2001, whose main objective is to reinforce openness and democracy, but within certain limits. Indeed, a direct and continuous interference of the public with on-going legislative processes would seriously compromise those processes and the functioning of the structures of representative democracy of the Union.

As regards the reference, in your confirmatory application, to Article 6(1) of Regulation 1367/2006, please note that the documents to which you request access do not concern emissions into the environment but are of a more general, programming, nature. Nor are the documents covered by any of the exceptions of Article 4(1) and (3), in which case an overriding public interest in disclosure would have been deemed to exist.

I therefore conclude that it has not been substantiated that there is an overriding public interest in disclosing the redacted parts of the documents to you.

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<sup>15</sup> <http://ec.europa.eu/environment/newprg/proposal.htm>.

### **3. PARTIAL ACCESS**

Pursuant to Article 4(6) of Regulation 1049/2001, I have also considered whether wider partial access could be granted to the documents requested.

In carrying out this exercise, I have also taken into account your statement, with regard to documents 9-10, that *the Commission could have partially disclosed these fiches in case some information should remain confidential.*

As explained above, the widest possible partial access is already granted to those parts of documents 9-10 which do not fall under any of the exceptions of Article 4 of Regulation 1049/2001.

For the reasons set out above, no meaningful wider partial access is possible to the documents requested without harming the interests protected by Article 4(3), first and second paragraphs of Regulation 1049/2001.

### **4. INFORMATION REQUEST REGARDING THE ACRONYMS USED IN THE DOCUMENTS DISCLOSED TO YOU AT INITIAL STAGE**

In your confirmatory application you state, with regard to documents 1-3, which were partially disclosed to you at the initial stage, that *the documents provided are not clear enough (inter alia because of the use of acronyms and references to certain unexplained terms), and that pursuant to the Aarhus Convention and Regulation 1367/2006, environmental information must be provided to the public in a transparent and clear manner.*

As explained above, the documents subject to your request were elaborated for internal purposes. This explains why acronyms are used therein which are not necessarily easily understandable for the general public.

Nevertheless, for your convenience, please find the meaning of these acronyms hereafter:

- CNL: Council;
- PCY: Presidency;
- COM: Commission;
- EP: European Parliament;
- MS: Member States(s);
- LS: Legal Service;
- ENV: Directorate General for the Environment;
- CLIMA : Directorate General for Climate Change.

## **5. MEANS OF REDRESS**

Finally, I draw your attention to the means of redress available against this decision. You may, under the conditions of Article 263 TFEU, bring proceedings before the General Court or, under the conditions of Article 228 TFEU, file a complaint with the European Ombudsman.

Yours sincerely,

Catherine Day

Enclosures (1): the five documents requested by you, to which partial access is granted, in one single file