NOTE TO THE ATTENTION OF THE DIRECTORS OF THE ENTERPRISE AND INDUSTRY DG

Subject: Handling of applications for public access to documents – updated procedure and designation of the ENTR coordinator

At their meeting held on 2 December 2010 Directors-General discussed the current status of the implementation of Regulation (EC) 1049/2001 and Commission Decision 2001/937/EC1 by the Commission services and concluded that it was imperative to address the systemic weaknesses identified by making the hierarchy more directly accountable and raising awareness of the provisions mentioned in order to ensure that the Commission fulfils its legal obligations while at the same time safeguarding its legitimate interests as well as the interests of any third parties concerned.2

To this end, and in order to meet the requirements set in the follow-up note of Ms Catherine Day and Mr Luis Romero Requena to all Directors-General dated 21/01/20113, an ENTR access-to-documents coordinator has been designated and the existing operating procedure for handling initial applications for public access to documents as well as the procedure for approving and signing final replies to such applications have been revised.

This note is aimed at introducing the main points that need to be taken into consideration by all staff members dealing with initial applications for public access to documents.

Role of the ENTR access-to-documents coordinator

Ms: the ENTR access-to-documents coordinator, and her team are responsible for monitoring the accurate and correct implementation of Regulation (EC) 1049/2001 by the DG, and more concretely, for ensuring that requests for public access to documents received by the DG are handled in accordance with all relevant provisions and case law.

1 OJ L 145, 31/05/2001, p. 43-48 and OJ L 345, 29/12/2001, p. 94-98 respectively
3 cf. (SG.E.3) Ares(2011) 69210
This includes not only dealing with all requests for access to documents that are already in the public domain, but also advising ENTR services on the assessment of the accessibility of documents, performing the formal quality control of final replies prior to signature by the hierarchy and providing information on the procedure established within the DG for handling initial applications for public access to documents.

The revised operating procedure (workflow) is schematically outlined in Annex I.

Furthermore, the ENTR access-to-documents coordinator also liaises with the Secretariat-General, especially with respect to the handling of confirmatory applications and represents ENTR in the Commission’s access-to-documents coordinators network.

In view of the above it is required that ENTR services notify the access-to-documents team of all new initial and confirmatory applications for public access to documents received directly (via the functional mailbox: ENTR ACCES DOCUMENTS). The access-to-documents coordinator must also be included in the ARES signatory (via the ARES virtual entity: ve_entr.access documents).

Compliance of final replies with Regulation (EC) 1049/2001 and relevant guidelines - Minimum requirements

Further to the general guidelines on handling requests for access to documents and the reply templates, the Secretariat-General has recently adopted a checklist aimed at ensuring that negative or partially negative replies sent by the Commission services fulfil the minimum requirements in accordance with Regulation (EC) 1049/2001 and relevant case law (see Annex II).

Revised rules for approval and signature of final replies

As reconfirmed by the above-mentioned note dated 21/01/2011, the Secretary-General and the Director-General of the Legal Service require that replies to initial requests for access to documents be signed by the respective Director-General or an authorised member of the senior management. Refusals to grant access, though, must as a rule be signed by the Director-General personally.

With a view to ensuring that the strict time limit of 15 working days laid down in Regulation (EC) 1049/2001 is respected, while at the same time guaranteeing high-quality replies to initial applications for access to documents that are not in the public domain the following revised approval procedure shall be observed in the DG (see Annex III):

Full disclosure of requested/relevant documents

The reply to initial applications that concern unpublished documents that can be disclosed in their entirety shall be signed by the respective Director.

The positive joint reply to applications that concern more than one ENTR service shall be signed by the Director of the lead Directorate following approval at the level of the

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respective Directorates as well as coordination and formal quality control by the R4 access-to-documents team.

**Non-disclosure and/or partial disclosure of requested/relevant documents**

The reply to initial applications for access to unpublished documents that can only be disclosed partially and/or cannot be disclosed at all shall be signed personally by the Director-General following approval at the level of the respective Directorate and formal quality control by the R4 access-to-documents team.

The negative or partially negative joint reply to applications that concern more than one ENTR service shall also be signed personally by the Director-General following approval at the level of the respective Directorates as well as coordination and formal quality control by the R4 access-to-documents team.

In the past years ENTR has consistently been among the ten DGs that receive and handle the highest numbers of applications for public access to Commission documents. Maintaining its very good performance and further improving the quality of its replies must be our common concern.

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