

Access to documents – Q&As

1. What is to be understood under "access to documents"?

The Commission services might at any time be requested to provide access to its documents, as it is provided for in Article 15 TFEU.

Applications for access must be made in writing in one of the official languages of the Union and may take the form of a letter, an e-mail or a fax. If a telephone request is made, the requestor has to be asked to apply in writing. Applicants are not obliged to state reasons for their applications for access.

2. Where should applications for access to documents be sent?

Applications for access may be sent to the Secretariat-General of the Commission (SG) or to the competent DG or Service:

Secretariat-General
European Commission
B-1049 BRUSSELS
Fax: +32-2-296.84.98
E-mail address: sg-acc-doc@ec.europa.eu

For other Directorates-General:

European Commission
B-1049 BRUSSELS

3. What is the legal basis for access to documents?

Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents – "the Regulation" - is the basic legislative act for access to EU documents.

Commission's internal rules as to the application of this Regulation have been put into Commission decision No 2001/937/EC, ECSC, Euratom of 5 December 2001 (notified under document number C(2001) 3714).

4. What is a "document"?

The Regulation applies to all documents held by the Commission, i.e. those it has produced or received, provided that they relate to its activities. A document is defined as any content, whatever its medium (written on paper or stored in electronic form (including e-mails) or as a sound, visual or audiovisual recording), concerning a matter relating to the policies, activities and decisions falling within the Commission's sphere of responsibility. Private correspondence is not, therefore, covered by the Regulation.

Any internal Commission document (including e-mails), on the other hand, may be requested. An internal document is one which either has not been finalised or is not intended for publication, like: preparatory documents on Commission policy decisions and initiatives (preliminary drafts, interim reports, draft legislative proposals or decisions), the

explanatory documents or other types of information such as statistics, memorandums or studies on which Commission decisions and policy measures are based, exchanges of correspondence between the Commission and the Member States, members of the public and companies (for exemptions to disclose internal documents see points 14 and 15 below).

Access may also be requested to documents originating with third parties, received and kept by the Commission. By "third party" we mean any natural or legal person or any entity outside the institution concerned, including the Member States, other Union or non-Union institutions and bodies and third countries (for details see point 12 below).

Applications for access to information in a database other than those already accessible to the public, are treated in the same way as applications for access to a document. In such cases the Commission will supply the information requested on condition that it is not covered by one of the exceptions provided for in the Regulation (see points 14 and 15) and that the application does not require new computer instructions to be issued in order to retrieve the data and can be processed by routine operations.

5. Do the requirements regarding access to documents apply also to old (or archived) documents?

Access to documents over 30 years old is governed by a separate legislative act (Council Regulation No 354/83 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community).

6. Do the requirements regarding access to documents apply also to electronic mail?

In principle, yes. As stated in point 4 above, *"a document is defined as any content, whatever its medium (...), concerning a matter relating to the policies, activities and decisions falling within the Commission's sphere of responsibility"*. In reality, the assessment whether an e-mail is a document fulfilling the above definition must be done on a case-by-case basis (example: an e-mail containing explanations with regard to an EU legislative act would be a document, whereas a simple exchange concerning a meeting (logistic or timing issues) or statements like "I agree" or "Please follow-up" would not).

7. What should be done if the application concerns a document that has already been published by the Commission?

In this case the application usually relates to a document published and sold by the Publications Office (EUR-OP), including the Official Journal (OJ). If an application relates to a document published by EUR-OP, the applicant may be asked to contact one of EUR-OP's sales agents, which distribute the publications for which a charge is made:

Sales, Promotion and Customer Support Service of EUR-OP
2, Rue Mercier
L-2985 LUXEMBOURG
Fax: 00/352/2929.4.27.63

EUR-OP sales agents can be found [here](#). Free publications, such as brochures and general information booklets, can also be obtained from Commission Representations in the Member States or from Commission Delegations in non-member countries.

The applicant may also be asked to consult Eur-Lex, which gives access to all EU legislation, or CELEX, which contains most of the acts published in the L and C series of the OJ. Eur-Lex and CELEX can be found on the EUROPA server.

Sometimes there is a delay between a document being adopted by the Commission and becoming available for sale. If the document requested is not yet available from the EUROPE sales agents in either paper or electronic form, the applicant can contact the Commission directly.

8. Who may request access to documents?

Any citizen of the Union or any natural or legal person resident or having its registered office in a Member State (subject to the principles, conditions and limits laid down in the Regulation). The EU institutions may, subject to the same principles, conditions and limits as in the case of EU citizens (who possess the explicit right for access), residents and legal persons, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.

It is important to emphasise that no category of applicants (journalists, MEPs, interest groups) receives preferential treatment as regards the time taken to reply, the way their applications are treated or the possibilities for appeal.

9. How are the requests registered?

Most of the requests arrive directly via the website of Secretariat General. Requests are registered in GESTDEM (central registration tool for all requests for access to documents managed by SG and DGs) and an automatic confirmation of receipt ("*accusé de réception*") is sent to the applicant. SG dispatches the request to the responsible DG. In case a request is addressed directly to the Cabinet or DG/Directorate/Unit via mail, letter or fax, the request has to be transmitted to the mailbox ENER ACCES DOCUMENTS for registration by Unit A-1 in GESTDEM.

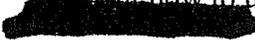
10. How are the requests handled?

The administration of initial applications for access is decentralised, i.e. it is treated by DG whose sphere of responsibility it concerns. Reply to the applicant is prepared within the relevant policy unit: positive one can be sent by simple e-mail, negative (including partially negative) one has to be consulted with the Legal Cell (see questions 14 and 15).

In the interests of greater efficiency, each Service and DG has designated a document access coordinator. In DG ENER it is the Unit A-1 (functional mailbox: ENER ACCES DOCUMENTS), contact details are given in question 13. All applications for access must go through these coordinators, who monitor progress in providing replies.

11. What if the application for access is unclear?

If the application is imprecise, the person dealing with the request should ask the applicant to provide further details in order to help to identify the documents requested. It is the official's duty to help the applicant in this respect, for example by providing information about how to use the public register of documents.

The period for replying to an application only begins once there is sufficient information to process with the request.

12. What if the application concerns a document originating from a third party?

In such case, the directorate or unit holding the document shall check whether one of the exceptions provided for by Article 4 of the Regulation (see points 14 and 15 below). If, after assessment, it is clear that access to such document must be refused, the negative answer shall be sent to the applicant without consultation of the third-party author.

On the other hand, the directorate or unit holding the document shall grant the application without consulting the third-party author where:

- the document requested has already been disclosed either by its author or under the Regulation or similar provisions,
- or:
- the disclosure, or partial disclosure, of its contents would not obviously affect one of the interests referred to in Article 4 of the Regulation.

In all other cases, the third-party author shall be consulted. In particular, if the application for access concerns a document originating from a Member State, the DG, department or unit holding the document shall consult the originating authority where:

- the document was forwarded to the Commission before the date from which the Regulation applies,
- or:
- the Member State has asked the Commission not to disclose the document without its prior agreement, in accordance with Article 4(5) of the Regulation.

The third-party author consulted shall have a deadline for reply no shorter than five working days, but this deadline must enable the Commission to abide by its own deadlines for reply (see points 16 and 17 below). In the absence of an answer within the prescribed period, or if the third party is untraceable or not identifiable, the responsible directorate or unit (in cooperation with unit A-1) decides in accordance with the rules on exceptions in Article 4 of the Regulation whether to disclose the requested document, taking into account the legitimate interests of the third party on the basis of the information at the Commission's disposal.

If it is intended to give access to a document against the explicit opinion of the third party author, the author will be informed of such intention to disclose the document after a ten-working day period and his attention shall be drawn to the remedies available to him to oppose disclosure (template letters can be found [here](#)).

13. Who does what?

After registration, Unit A-1 sends out the "accusé de réception" to the applicant. This unit is in charge of the organisation of access to documents in DG ENER: [REDACTED] ([REDACTED] for legal assistance, [REDACTED] for daily management

(GESTDEM, co-ordination, registration, respect of deadlines, contacts SG) and [REDACTED] for legal supervision.

The relevant policy unit, to whom the request was attributed, prepares reply to the applicant (informal e-mail with attachment(s) is enough in case of positive replies). Negative replies (total or partial refusal for access) are to be signed by the Director-General and need to be consulted with the Legal Cell (contact details given above).

14. Can a request be refused? What are the bases for refusal?

Article 4 of the Regulation clearly specifies the exceptions to the right of access, which may be classified as follows:

- 1) access may be refused if disclosure of the document would undermine the protection of:
 - the public interest as regards public security, defence and military matters, international relations, the financial, monetary or economic policy of the Community or a Member State;
 - privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data;
- 2) unless an overriding public interest warrants the disclosure of the document in question, access may be refused if disclosure would undermine the protection of:
 - commercial interests of a natural or legal person, including intellectual property;
 - court proceedings and legal advice;
 - the purpose of inspections, investigations and audits;
- 3) unless an overriding public interest warrants the disclosure of the document in question, access may be refused if disclosure would seriously undermine the Commission's decision-making process. This applies to any document:
 - drawn up by the Commission for internal use or received by it, which relates to a matter on which it has not yet taken a decision;
 - containing opinions for internal use as part of deliberations and preliminary consultations within the Commission, even after the decision has been taken.

A Member State may also ask an institution not to disclose a document originating from that Member State without its prior agreement.

A refusal (also partial) to grant access must be based on one of the **exceptions explicitly provided for in the Regulation**. The reasons for the refusal must be properly stated and requestor must be provided with a list of documents for which access was refused.

Does the system of exceptions always justify refusing access to the entire document?

No. If only part of the document requested is covered by one or more of the exceptions provided for in the Regulation, the other parts of the document may be disclosed (Article 4(6) of the Regulation). Granting partial access will mean concealing or deleting the words, sentences or paragraphs to which an exception applies. If access can only be granted to an extract from a document the applicant must be told what the total volume of the document requested is.

The European courts have accepted that, in the interests of sound administration, the Commission may invoke the principle of proportionality as regards the effort it has to make to afford partial access to a document. Thus in exceptional cases, where the volume of the document or of the passages to be censored would entail a disproportionate amount of administrative work, the Commission may apply this principle to weigh up the interest served by public access to these fragmentary extracts against the workload involved in producing them.

The relevant jurisprudence includes:

- Case T-14/98 Hautala v Conseil (judgement of 19 July 1999, paragraph 86):
confirmed in:
- Case C-353/99 P Conseil v Hautala (judgement of 6 December 2001, paragraph 30):
- Case T-204/99 Mattila v Conseil and Commission (judgement of 12 July 2001, paragraphs 68 and 69):
- Case T-211/00 Kuijer v Conseil (judgement of 7 February 2002, paragraph 57):

16. What is the normal time limit for replying to an initial application?

A written reply must be given within 15 working days from the date of registration of the application by the DG or Service involved. "Working days" means any days other than those on which the Commission departments are closed. GESTDEM calculates automatically the deadline, taking into account the holidays.

This deadline **MUST** be met. Failure to reply within this period is equivalent to refusing access. This means that after this deadline has lapsed an applicant who has not received a reply may make a confirmatory application to the Secretary-General (see question 19).

17. Can the limit of 15 working days for replying to applications be extended?

In exceptional circumstances the prescribed time limit may be extended by 15 working days. The applicant will then be notified of the extension of the time limit in a holding letter explaining the reasons for the delay - see model letters.

Possible reasons for extending the time limit for replying include (the list is not exhaustive):

- the number of documents requested / the volume of the material requested;

- the need to consult other Commission departments;
- the need to consult a third party author;
- the complexity of the application (e.g. partial access) or difficulty in finding the document requested (e.g. an old document); etc.

18. What happens if the Commission fails to reply to an initial application?

Failure by the Commission to reply to an application within the prescribed period is equivalent to a refusal to grant access and constitutes grounds for the applicant to submit a confirmatory application.

19. What is the "confirmatory application"?

In the event of a total or partial refusal the applicant may, within 15 working days from the receipt of the reply, send a confirmatory application to the Secretary-General, asking the Commission to reconsider its position. The applicant may also make a confirmatory application in the absence of a reply within the prescribed time limit. Applicants must be informed of their rights in the initial reply.

20. Who deals with confirmatory applications?

Power to take decisions on confirmatory applications is delegated to the Secretary-General. The DG or Service that handled the initial applications will help the SG to prepare the decision (unit ENER A-1 is responsible for overall coordination and contacts with the SG – see contact details in question 13).

The decision is taken by the Secretary-General with the agreement of the Legal Service. If the Legal Service does not agree, or if there is disagreement on the action to be taken in response to a confirmatory application relating to a document held by a Member of the Commission or a member of his/her cabinet, the matter will be referred to the full Commission.

21. What is the normal time limit for replying to a confirmatory application?

Confirmatory applications must be dealt with within 15 working days from their registration.

In exceptional circumstances, for example when an application relates to a very long document or a very large number of documents, the prescribed time limit may be extended by another 15 working days. Reasons for extending the time limit for replying to a confirmatory application are similar to those concerning initial application (see question 17). Failure by the Commission to reply within the prescribed time limit is equivalent to a negative reply.

22. What rights do applicants have if their confirmatory application is refused?

If access is refused following a confirmatory application, the Commission must inform the applicant in writing of his or her right to bring an action in the General Court (GC) or to complain to the European Ombudsman (according to the conditions laid down in Articles 263 and 228 TFEU respectively). Citizens of non-member countries who are not resident

in a Member State and legal persons that do not have their registered office in one of the Member States do not have the option to lay a complaint before the European Ombudsman. They may however bring an action before the GC and will therefore be informed only of this possibility.

Applicants have the same possibilities of redress in the event of a failure to reply within the prescribed time limit.

23. Are the applicants charged for their requests for access to documents?

No charge is made if the documents are consulted on the spot, if the number of copies requested is no more than 20 A4 pages, or if the document(s) can be accessed directly in electronic form or via the register.

A system of invoicing may be applied to applications relating to documents of over 20 pages. The rate charged is €0.10 plus postage, i.e. the normal cost of photocopying. The invoicing system is optional. It is advised to invoice costs only in the case of applications for voluminous documents or repetitive requests – responsible departments can therefore decide whether or not to invoice costs on a case by case basis.

The charges for information supplied on other media (computer data, audio tapes, etc.) will be decided by the DGs and Services case by case, subject to the principle that charges must be reasonable.

If the DG or Service intends to invoice costs, it must notify the applicant before sending the document. If the requester agrees to the charge the department will send a second letter, which must always specify the number of pages, to enable EUR-OP to calculate the charge. A copy of this letter must be sent immediately to EUR-OP to enable it to produce the invoice and follow up the payment. If necessary, a document should be attached to the copy intended for EUR-OP setting out the various details required for billing:

- DG, department, official responsible for the file, administrative address, telephone number;
- requester's name and address for invoice;
- description of the documents sent, exact number of pages, date of dispatch;
- cost of post and packaging;
- list of people who should be sent a copy of the confirmation of dispatch of the invoice.

Published documents (see question 5) are not covered by the policy on public access and are governed by their own price system.

24. Are applicants allowed to copy or sell documents they have received?

Yes, applicants may copy documents they have received from the Commission, but not for commercial purposes, without prior consultation.

Further information can be found [here](#).