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NOTE FOR THE ATTENTION OF DG REGIO HEADS OF UNITS

Subject: Guidance on dealing with access to documents requests.

In view of the increase in access to documents requests and the number of difficult issues encountered in dealing with them, I would like to highlight some key requirements to be borne in mind when drafting replies on requests for access to documents:

- For each request for access to documents, it needs to be assessed individually whether one of the exceptions of Article 4 Regulation (EC) No 1049/2001 applies.
- The exceptions of Article 4 of Regulation (EC) No 1049/2001 must be interpreted and applied strictly.
- The examination of an application for access to documents must be specific in nature.
- The mere fact that a document concerns an interest protected by an exception is not sufficient to justify the application of that exception. It has to be assessed whether access to the document could specifically and actually undermine the protected interest. The risk of a protected interest being undermined must be reasonably foreseeable and not purely hypothetical.
- In order to establish that the exception of Article 4(3) first subparagraph of Regulation (EC) No 1049/2001 (on-going decision-making process) applies, the decision-making process has to be “seriously” undermined. The serious nature depends on all circumstances of the case.
- Articles 4(2) and 4(3) of the Regulation provide only "relative" exceptions. The protected interest has to be balanced against any potential overriding public interest in disclosure.

- As a consequence, when applying the exceptions of Articles 4(2) and 4(3) of the Regulation in a negative reply, an explicit reasoning on the absence of an overriding public interest needs to be included in a negative reply.
- If only parts of a document are covered by an exception, partial access according to Article 4(6) of the Regulation needs to be considered.
- As regards the level of signature for replies to access to documents requests, the Secretariat-General has stated that in cases where the only parts of documents to which access is refused are the names of individuals contained therein **and** the applicant has not explicitly expressed an interest in obtaining access to those names, these replies can be signed by the Head of Unit responsible for the policy area (in derogation from Article 3 of the Detailed Rules of Application of Regulation (EC) No 1049/2001 providing that negative replies usually need to be signed by the Director-General).

For more detailed information, in addition we would like to refer you to our note 28 October 2014 (Ares (2014) 3576039) on Access to documents.

Please send the name of your unit's correspondent responsible for access to documents to the functional mailbox REGIO ACCESS DOCUMENTS by 31 July.

