

Access to Documents

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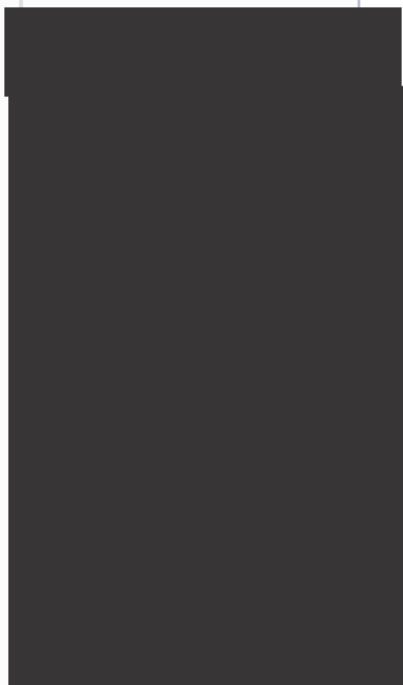
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COMP ACCESS TO DOCUMENTS

For legal guidance:



Main Steps in Handling Requests for Access to Documents - FAQ

Please click on the questions below to expand the answer.

1. I received an access to documents request. What do I do?

The first step is to carefully read the request and see first whether it refers to **actual documents** or just to **mere information** about our files/ procedures etc.

1.1 Is it access to documents, access to file or just request for information to the public?

✓ [Click here for the answer and guidance](#)

If **only information is requested**, the procedure for access to documents involving R1 does not apply, but you should still send an answer according to the **Code of good administrative behaviour** within 15 working days (which may be extended in written by 15 working days).

If the request is about **actual documents**, then, unless the applicant has specified another legal basis (or has the right to invoke such alternative legal basis) for requesting access (e.g., access to file, damages directive, loyal cooperation with Member States authorities), it should be considered as an access to documents request and treated under Regulation 1049/2001 (even if the Regulation is not expressly mentioned).

Please note that public access to documents under Regulation 1049/2001 is different than access to file for antitrust and merger cases, notably because of its **erga omnes effect**. This means that the capacity, legal standing and interests of the requester are irrelevant for access to documents under Regulation 1049/2001. The idea is that once documents are disclosed to any requester, they are considered publicly available (even if not necessarily published) and they have to be disclosed to any other requester who may decide to publicise them. According to the case law, the "purpose of Regulation 1049/2001 is to guarantee access for everyone to public documents and not just access for the requesting party to documents concerning it" (Joined Cases T-110/03, T-150/03 and T-405/03, *Sison v Council*, paragraph 50; Case T-181/10, *Reagens SpA v Commission*, paragraph 143).

If the request was received directly by you (or from the Registry, but not marked as access to documents) and not yet registered in the Gestdem for access to documents requests, you should forward it **immediately** to **COMP ACCESS TO DOCUMENTS** for proper registration and calculation of deadlines.

1.2 What if the request does not mention Regulation 1049/2001?

✓ [Click here for the answer and guidance](#)

Even if the request does not expressly refer to Regulation 1049/2001, but asks for access to documents of the Commission, you should analyse if there is any other legal basis for granting access to those documents to the requester.

If the requester has the right to receive such documents under another legal basis (such as access to file in antitrust and merger cases, transmission of the non-confidential version of the decision to the complainant etc.), you should confer with the requester and understand the type of access the requester is looking for and the consequences thereof. For example, it is more likely that an investigated undertaking may obtain a document under the stricter procedure of access to file with the obligation of not using it for any other purpose than its rights of defence, whereas under public access to documents, it would not receive such document, because this would mean publicising it to the world.

If the request was however already registered in Gestdem, you should obtain a written confirmation from the requester that it withdraws the request under Regulation 1049/2001 and should be further treated under another applicable legal basis.

For further clarifications or in case of doubt, contact the **ATD LEGAL TEAM**.

2. Which documents are requested?

When documents are requested check the following:

2.1 Is the description of the documents clear enough to help you identify and make an assessment?

✓ [Click here for the answer and guidance](#)

If not, you can send a request for clarifications to the requester, asking for more details regarding the documents of interest (such as narrower description, period covered, correspondents etc.) according to the **TEMPLATE for requests of clarifications**.

The sending out of a clarification request 'stops the clock' until the requester replies with the necessary clarifications. A new deadline to reply of 15 working days (which may be once extended with 15 working days) will start running from receiving the clarifications reply.

2.2 Does the document exist in the Commission's possession?

✓ [Click here for the answer and guidance](#)

You should check the corporate storage devices/ applications and assess whether there are **documents to be registered according to SG criteria and practical guidance**. Always have such Commission documents **registered in the case management applications** (Natacha/ CMS/ Isis/ CMAfx).

If no document is found, check with the applicable Registry and Archive if it may be retrieved from the **archives**.

You can also check with the coordination/ horizontal units whether they are aware of any relevant files/ storage where the documents may be searched.

If the document does not exist as such, but its contents/ information sought can be **easily** retrieved **only through automatic means** from an existing Commission database (e.g., a list derived through a simple search in an application), it has to be extracted in a document. This does not apply to information/ contents from external databases which the Commission is allowed to use for its own activity, as IP rights may apply. In case of doubt, contact the [ATD LEGAL TEAM](#).

If after all these steps, **no document is found**, a reply to this effect may be sent according to the [TEMPLATE for devoid of purpose requests](#). Be aware that, if a confirmatory request is introduced at SG to reanalyse the initial reply issued by DG COMP, SG will ask for a written confirmation signed by the Director General that after all searches no such documents were found.

2.3 Is any of the requested documents already public?

▼ [Click here for the answer and guidance](#)

If so, access will be given to such public document (either by inserting the link to the website or by attaching the respective document – if necessary with some redactions). Please note that documents already given in a previous access to documents request to any person are accessible for the future and considered public.

If any part of the disclosed documents is redacted, the visa from the [ATD LEGAL TEAM](#) in R1 is necessary.

If in addition to the public ones, other documents are requested, follow the analysis below for the remainder of the request.

2.4 Is any of the documents requested older than 30 years?

▼ [Click here for the answer and guidance](#)

Documents older than 30 years should in principle be made accessible and the regime and procedure applicable is set forth in [Regulation 354/83](#) concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community, as amended by [Regulation 1700/2003](#) ('**Historical Archives Regulation**'). However, before releasing documents covered by professional or business secrecy, the institution has to consult the concerned party or undertaking and take into account their observations.

The Historical Archives Regulation and the case law allow the protection of personal data and of commercial interests from public access to documents even after 30 years in special circumstances.

Whenever receiving requests for such documents, liaise with R1 and the Archives team for transfer to the Historical Archives. In order to discuss whether special circumstances apply, consult the [ATD LEGAL TEAM](#).

2.5 Is it about a case (investigation/ pre-notification/ court case/ monitoring etc.) or a legislative procedure/ policy proposal?

▼ [Click here for the answer and guidance](#)

If the documents belong to an **administrative investigation carried on by DG COMP** (a case), then they might be protected overall, by applying a general presumption of non-disclosure recognised by the case law with regard to the exception regarding the protection of investigations. You should undergo the assessment below to check the applicability of a presumption.

If the documents refer to **policy projects**, contributions to soft law and legislative proposals, or other consultations not linked to specific investigations, the answer is not that straightforward and in principle each document requested has to be individually examined to see whether any protection from disclosure applies.

2.6 Is it about an open case?

▼ [Click here for the answer and guidance](#)

For the purpose of access to documents, an open case has an autonomous meaning (as established by the Court) than the mere administrative stage. A case is considered **open as long as the Commission may review it and resume the investigation** until definitive and irrevocable closure. This includes pre-notification formalities, cases where the decision was adopted but the deadline for appeal has not expired or there are ongoing court procedures, monitoring of commitments/ remedies and recovery decisions etc.

If the documents belong to such an open case, in principle, you may refuse access by using the general presumption of non-disclosure of documents in pending investigations.

You can use the available **TEMPLATES** for NEGATIVE REPLIES for each instrument, by adjusting them according to the request at hand and the applicable exceptions:

- [Antitrust](#)
- [Mergers](#)
- [State Aid](#)

2.7 Is it about a closed case?

2.7.1 Documents exchanged by the Commission with external parties

✓ [Click here for the answer and guidance](#)

For merger cases, the *Agrofert* judgment has recognised the applicability of the general presumption of non-disclosure to **correspondence between the Commission and other external parties**, even when the case is closed, considering the commercially sensitive nature of the information exchanges and the need to ensure cooperation of the parties in investigations.

Based on this reasoning, DG COMP is applying the general presumption of non-disclosure to documents exchanged with external parties or (parts of) the documents containing information received from external parties also to closed Antitrust and individual State aid cases (whenever commercial interests may be invoked). External parties are any persons, entities and Member States which are not part of the EU institutions.

For State aid schemes, there is no express case law up-to-date regarding the use of general presumptions, therefore when examining the request please consult the [ATD LEGAL TEAM](#).

2.7.2 Internal documents in closed cases

✓ [Click here for the answer and guidance](#)

The case law is not currently very clear regarding the treatment of internal documents pertaining to closed cases investigated by DG COMP.

Since the *MyTravel* judgment, the Commission had to undertake an **individual examination** of the requested documents and provide explanations on the reasons for applying an exception for disclosure when redactions were made.

The Court has further clarified in the *Miettinen* judgment that a refusal of a legal opinion may be grounded if the institution proves the particular sensitivity of such document or the fact that it has a particularly wide scope for other projects beyond that question.

Recent case law of the General Court concerning OLAF investigations goes further and recognises the applicability of a **general presumption of non-disclosure for internal documents** (without undergoing an individual examination) even in closed cases pertaining to administrative investigations based on specific procedural regulations (*Strack*). However, the Court also noted in one of the cases that this presumption may be used for as long as there are follow-up activities to the investigation (such as national measures) and such activities occur within a reasonable period (*International Management Group*). Please consult with the [ATD LEGAL TEAM](#) for the applicability by analogy of this presumption to DG COMP investigations.

2.8 What is a general presumption of non-disclosure and which are its effects?

✓ [Click here for the answer and guidance](#)

The general presumption of non-disclosure is a notion established by case law which allows the application of one or several exceptions from disclosure under Regulation 1049/2001 to documents of a similar category, without having to undergo an individual assessment of each of such documents. This practically means that it is sufficient to know that the respective type of documents contain information which is covered by one of the respective exceptions (as recognised by the Court), without checking if such type of information is present in any other document of the same category (e.g., correspondence with the investigated party).

Applying a general presumption of non-disclosure is a right recognised by the Court for certain circumstances, but not an obligation. Whenever applying the presumptions of non-disclosure, there is no need to perform an analysis of the contents of the documents, nor to consult any party or Member State.

However the general presumptions of non-disclosure have their limits, as the Court mentions that the requester may prove an overriding public interest for exceptions under Art. 4(2) and (3) of Regulation 1049/2001. In such case, the Commission must undertake a balancing of the interests (i.e., the protection from disclosure and the specific interest for the public) in order to assess whether the presumption may be reversed. Up to now, the Court has not given specific criteria for the assessment of the overriding public interest (although mentions the balancing of interests in the context of requests pertaining to private damage claims), but mentioned that private interests of the applicant (such as using the respective documents in subsequent litigation or for the rights of defence) do not qualify as overriding public interest.

2.9 What happens if the requested document is the list of the documents in the file?

✓ [Click here for the answer and guidance](#)

According to the *Axa* judgment, partial access should be given to the list of documents in cartel cases, so as not to make impossible or excessively difficult the right to an effective remedy for damage claimants seeking references to documents which might be useful for their claims. However, the balancing of interests may run in favour of disclosure of the list of documents only when there has already been a decision on the case (even if still under appeal), as otherwise the right of damage claims could not be reasonably foreseen as long as no competition infringement was found.

On the other hand, for State aid cases, the *Sea Handling* judgment expressly mentions that the applicability of general presumptions of non-disclosure in State aid and merger cases would also cover the list of correspondence in the file.

Therefore, the case that might prompt in favour of disclosure would be if the requester invoked the need of the list of documents for supporting a private damage claim against undertakings found in breach of competition rules.

When the list of documents is prepared for disclosure (which is generally the access-to-file list generated by the system), a line-by-line

assessment should be made in order to redact the information covered by the exemptions, such as any personal data, names of undertakings which were not addressees of the decision, information extracted from leniency or settlement statements etc. The redactions should be in line with the publication policy for the information to be redacted from the decisions.

2.10 What happens if the document to be disclosed contains personal data?

✓ [Click here for the answer and guidance](#)

If it is decided to grant access to a document which contains some **personal data** (such as names of individuals – be it third party or Commission staff up to the level of Director, addresses etc.), the principle is that personal data should be redacted prior to disclosure. The redaction of personal data should follow the [guidance criteria](#).

The reply should contain the reasoning regarding the redaction of personal data based on the templates provided by SG (depending on whether the requester is from the [EU/ EEA](#) or from a [third country/ international organisation](#)), and the reply letter may be signed by the Head of Unit (as per SG Note).

2.11 What if it is a classified document?

✓ [Click here for the answer and guidance](#)

If the request concerns one or more documents which are classified according to [Commission Decision 2015/444](#) on the security rules for protecting EU classified information, the request has still to be assessed (unless it falls under a general presumption of non-disclosure), as classification does not automatically render the document out of scope of Regulation 1049/2001. Please note that the special marking used by DG COMP and other DGs does not qualify a document as "classified", [classified information \(EUCI\)](#) being only those which bear one of the central markings:

- RESTREINT UE/EU RESTRICTED(R-UE/EU-R)
- CONFIDENTIEL UE/EU CONFIDENTIAL (C_UE/EU-C)
- SECRET UE/EU SECRET (S-UE/EU-S)
- TRES SECRET UE / EU TOP SECRET (TS_UE/EU_TS)

The handling of a classified document may be done only with observance of the applicable rules for these types of documents (e.g., access rights). If following the review, it appears that the document might be disclosed (even if partially), the [declassification](#) of the document has to be requested prior to replying to the access to documents request.

For any questions, please consult with the [ATD LEGAL TEAM](#).

2.12 What happens if it is a disproportionate request?

✓ [Click here for the answer and guidance](#)

In case of a request which concerns a very long document or a very large number of documents, article 6(3) of Regulation 1049/2001 indicates that you may confer with the requester in view of finding a fair solution. SG issued [guidance](#) on treating such wide requests.

If a fair solution cannot be agreed upon with the requester, you may refer to the proportionality principle to justify a refusal to process the application on the grounds that this would involve a disproportionate amount of work for the efficient running of the administration.

Whenever dealing with wide-scope requests, please consult with the [ATD LEGAL TEAM](#).

3. Which is the legal deadline to reply?

✓ [Click here for the answer and guidance](#)

The initial deadline to reply is of **15 working days** from registration of the application.

This deadline may be **extended only once with an additional time of 15 working days** (calculated from the end of the initial deadline, irrespective when the extension takes place).

You should send the requester a **holding reply** (according to the [TEMPLATE](#)) to notify him/her of the extension of the deadline and the reasons therefor.

Failure to reply within the prescribed time limit is deemed a tacit refusal and entitles the applicant to make a confirmatory application at SG to review such position.

4. Do I need to consult any third parties in view of deciding on the disclosure of documents?

✓ [Click here for the answer and guidance](#)

If a general presumption of non-disclosure applies, there is no need to consult other parties.

In case the **documents originate from a Member State** and DG COMP considers the possibility of providing (partial) access to the documents in question, the respective Member State should be mandatorily consulted. A letter signed by the Head of Unit based on the [Member State consultation TEMPLATE](#) should be sent to the Member State with a copy to the designated representatives in the PermRep

(according to the [list](#) provided by SG).

For **third-party documents**, if DG COMP considers the possibility of providing (partial) access, it should consult the respective third party, unless it's clear that the documents may be disclosed or not. In practice, to ensure a safe approach, it is better to consult the third party (if known) to make sure that no exception under Regulation 1049/2001 may be invoked for refusing to release the document, in full or in part. A letter signed by the Head of Unit based on the [Third party consultation TEMPLATE](#) should be sent by e-mail.

If it is a **document emanating from another DG or another EU institution**, the practice is that this should be consulted prior to any disclosure.

For the initial reply, a *prima facie* assessment is sufficient. This means that, if the third party/ Member State objected to disclosure by invoking reasons related to one or several exceptions provided by Article 4 of Regulation 1049/2001, DG COMP refuses access to the documents in question, by invoking the objections received. The Commission can decide to disregard the opposition of a third party at the stage of the confirmatory application treated by SG.

If the document contains **personal data**, such data should in principle be redacted, unless the restrictive conditions under Regulation 45/2001 for disclosure (i.e., transfer of personal data) are fulfilled or if there is a consent of the data subject. In the latter case, you need to consult with the respective individual whether he/she agrees to disclosure of its identity (e.g., in case the originator of the document wants to know the identity of the requestor).

For further clarifications or in case of doubt, contact the [ATD LEGAL TEAM](#).

5. What types of replies can be given?

✓ [Click here for the answer and guidance](#)

If access can be given in full, it's a **positive reply** which can be sent by e-mail by using the [POSITIVE REPLY TEMPLATE](#) (including the applicable disclaimers therein).

If the requested document is one which is normally published after clearance of confidentiality claims (e.g., the non-confidential version of a decision) and the date of adoption of such document is relatively recent), a reply using the [TEMPLATE 'Decision soon to be published'](#) can be sent and this is not normally considered a negative reply. Please note that the [Schenker](#) judgment indicates that at least a meaningful provisional non-confidential version of a decision should be published after a reasonable time (around 8 months).

If **no document are found** corresponding to the request, this is treated in the same way as a negative reply based on the [TEMPLATE 'Devoid of purpose'](#).

If any parts of the document(s) have to be redacted, then it's a partial **negative reply** which has to be drafted according to the templates and obtain the visa from the ATD LEGAL TEAM in R1 prior to signature by the Director General.

If only **personal data** are redacted and they have not been specifically requested, the reply (according to the [TEMPLATES for request from within EU/EEA or request from third country/ international organisation](#)) may be signed by the Head of Unit (or person replacing him/her).

In case of doubt, contact the [ATD LEGAL TEAM](#).

6. Which is the language of the reply?

✓ [Click here for the answer and guidance](#)

In principle, the reply should be sent in the same language of the request, unless there is a waiver received from the requester. When preparing internally the reply, a working translation into a working language may be necessary in order to obtain the informed endorsement from the hierarchy in the signataire workflow.

In special circumstances or in case of pressure to comply with the deadline, the reply might be sent in one of the working languages (generally English) with the special mention to the requester that it may ask for a translation in the language of its request.

In case of doubt, contact the [ATD LEGAL TEAM](#).

7. Which is the applicable procedure in COMP for replies to access to documents?

7.1 Positive replies

✓ [Click here for the answer and guidance](#)

Positive replies, including replies referring to decisions/ documents soon to be published, should include the applicable disclaimers (as mentioned in the [TEMPLATE](#)) and may be signed by the Head of Unit.

They may be sent out directly by e-mail by the case handler/ functional mail box/ relevant Registry, with a copy to [COMP ACCESS TO DOCUMENTS](#) and the relevant Registry.

There is no need for a visa from R1, nor other formality.

7.2 Negative replies (or equivalent)

✓ [Click here for the answer and guidance](#)

Negative or partly negative replies to access to documents requests should be signed by the Director General.

Once the reply is drafted it should undergo the **approval workflow** (including case handler, director, visa from the Access to Documents Legal Team in R1 and Administrative Assistant of the Director General). The electronic signataire is in the process of being introduced for the validation. Until then, the [circulation list](#) should be used.

Unit R1 (contact: [REDACTED]) gives **electronic visa** by e-mail to draft negative or partly negative replies, before the signataire is circulated with the hierarchy, so that uniform application of Regulation 1049/2001 is ensured.

The **signataire** (or the attachments to the validation e-mail) should include:

- the draft negative reply, as approved by the [ATD LEGAL TEAM](#) in R1,
- the initial request for documents (including any clarifications received),
- the e-mail with the visa from R1 on the draft negative reply,
- the standard form of postal acknowledgment of receipt (*accusé de réception*), duly filled in and also mentioning the GestDem number, according to the [model](#).

For **sending the replies**, the following instructions from the SG should be followed:

- The paper version of the reply signed by the Director General should be sent by the case team (or by the relevant instrument registry, if this is the established procedure) by registered mail with acknowledgment of receipt (the acknowledgment form specifically mentioning the Gestdem number).
- Documents for which (partial) access has been granted (as referred to in the reply) are transmitted by e-mail only.
- It is preferable to send, in advance of sending the registered mail, a scanned copy of the (partially) negative reply (as signed by the Director General) via email where an email address is available (please use the standard [cover message](#)).

For more details, please contact [COMP ACCESS TO DOCUMENTS](#).

8. Which are the possibilities of further review of the reply issued by DG COMP? What is a confirmatory application?

✓ [Click here for the answer and guidance](#)

In case DG COMP sends a (partial) negative reply or equivalent, including if no documents exist or are found or DG COMP has not replied within the legal deadline, the requester may file to SG a confirmatory application (which is a request of administrative review).

SG will assess the application and generally consults with the DG in question in view of providing the answer which is then adopted as a Commission decision (including consultation of the Legal Service). Only the decision adopted by SG may be challenged in Court or in front of the Ombudsman.

9. What do I do when SG asks for the case team contribution for a confirmatory reply?

✓ [Click here for the answer and guidance](#)

When receiving a confirmatory application, SG usually asks [COMP ACCESS TO DOCUMENTS](#) to be put in contact with the case team.

The standard message from SG asks for a couple of information and the approach for DG COMP case handlers to reply should in principle be the following:

- The list of documents requested and copies of the documents

If the reply issued by DG COMP used the general presumption of non-disclosure, there is no need to list or attach the documents as they are all covered by the presumptions recognised by the case law (and thus no individual analysis is necessary).

- The name of case handlers

SG refers to the person(s) having actually drafted (and participated in the drafting of) the COMP reply to access to documents and not to the case handlers having originally dealt with the case on the substance. Most of the time, these are the same persons, but they may be different in case the team changed or initial case handlers are no longer working on that.

- Arguments for replying to the aspects put forward by the requester in the confirmatory application

If the requester added other grounds or substantiated the initial ones, the case handler should provide a brief bullet list by e-mail of specific answers to such grounds.

Templates

- [Positive reply](#)
- [Negative reply](#)
 - [Antitrust](#)
 - [Mergers](#)
 - [State Aid](#)
- Personal data redacted: [request from within EU/EEA](#) or [request from third country/ international organisation](#)
- Letter to MS - Art.4 (5) Reg.1049/2001 - [EN / FR](#) (NB: When consulting the Member State, also copy the persons in charge from the respective PermRep, according to this [list](#) provided by SG)
- [Letter to MS - Art.5 - consultation](#) (NB: When replying to a consultation from the Member State, copy the persons in charge from the respective PermRep, according to this [list](#) provided by SG)
- [Third Party Consultation Art. 4\(4\) letter](#)
- [Decision soon to be published](#)
- Letter "Document cannot be found" (considered as a negative reply)
- [Holding reply](#)
- [Applicant has to pay for copies](#)
- [Commission will give access to your document](#)
- [Request for clarification](#)
- [Request for postal address](#)
- [Cover e-mail for negative replies](#)
- [Signataire circulation list](#)
- SG Guidance: [Standard Answer regarding Legal Basis for Postal Address](#) (only if requested by applicant)
- [SG Templates](#) (in all EU languages): please check these against DG COMP specific templates and contact [COMP ACCESS TO DOCUMENTS](#) in case of doubt

Legal Framework

- [Relevant parts of the TFEU and Charter of Fundamental Rights](#)
- [Regulation n°1049/2001 \(All linguistic versions\)](#)
- [1049 Implementation Decision](#)
- [MoU between the EP, Council and COM](#)
- [Member States Legislation](#)
- [Federal Trade Commission - FOIA](#)
- [Europa page on Access to Documents](#)

Guidance

- [SG Access to Documents intranet page](#)
- [Flow Chart Guidance Steps in the Procedure](#)
- [Applicable Exceptions: Flow Chart Guidance](#)
- [Case law overview by the SG: general access to documents](#)
- [Case Law Overview - access to lists of documents in the files](#)
- [Comments to the Ombudsman - Private Enforcement in AT cases](#)
- [SG Note](#) - "Handling of applications for public access to documents" (21/01/2011)
- [EDPS Note](#) - Public access to documents containing personal data after the *Bavarian Lager* ruling (25/03/2011) [SG's Guidance on documents in Infringement](#)
- [Note of the SG](#) - Access to old documents (05/04/2010)
- [Speech of Isabelle B  noliel on 26/06/2015 - Transparency and confidentiality in competition investigations \(speech - slides\)](#)
- [Commission's Annual Report on Access to Documents 2015](#) (including [Annex with statistics](#))

Court cases

Regulation 1049/01 has been already tested in the courts. Moreover, before the adoption of the Regulation, the right of public to access to Commission documents was governed by Decision 94/90. Case law relating to Decision 94/90 therefore is relevant to many of the underlying

principles of transparency.

Case law overview by the SG

▼ [List of Judgements on Public Access to Documents \(click to expand\)](#)

Reference	Subject	Judgement	Info-flash
C-271/15 P Sea Handling v Commission	Appeal – Access to documents – Regulation (EC) No 1049/2001 – Exception related to the protection of the purpose of inspections, investigations and audits – Interpretation – Obligation to state reasons – Documents pertaining to a State aid procedure – General presumption of confidentiality of the entirety of documents in the administrative file – Extent of the presumption of confidentiality – Request of access to the complaint which initiated the procedure – Refusal of access – No overriding public interest	Link	
T-677/13 Axa Versicherung v Commission	Access to documents – Regulation (EC) No 1049/2001 – Documents concerning competition proceedings – Request concerning a set of documents – Refusal of access – Request concerning a single document – Table of contents – Obligation to carry out a concrete and individual examination – Exception relating to the protection of the commercial interests of a third party – Exception related to the protection of the purpose of inspections, investigations and audits – Overriding public interest – Damages action – Obligation of state reasons	Link	
T-623/13 Unión de Almacenistas de Hierros de España (UAHE) v Commission	Access to documents – Regulation (EC) No 1049/2001 – Documents concerning two national competition proceedings – Documents sent to the Commission by a national competition authority in the framework of EU rules on cooperation – Refusal of access – Exception related to the protection of the purpose of inspections, investigations and audits – Exception relating to the protection of the commercial interests of a third party – Absence of obligation of the relevant institution to carry out a concrete and individual examination of the contents of the documents which are the subject matter of the request for access if the respective investigation is definitively closed – No necessity of measures of organisation of procedure requesting the production of the documents subject to litigation – No taking into account of the particular situation of the requester	Link	
T-456/13 Sea Handling v Commission	Access to documents – Regulation (EC) No 1049/2001 – Documents regarding State aid proceedings – Refusal of access – Exception related to the protection of the purpose of inspections, investigations and audits – Exception relating to the protection of the commercial interests of a third party – Obligation to carry out a concrete and individual examination – Overriding public interest – Partial access	Link	

T-534/11 Schenker AG v Commission	Access to documents – Regulation (EC) No 1049/2001 – Administrative file and final decision of the Commission regarding cartels, non-confidential version of the decision – Refusal of access – Obligation to carry out a concrete and individual examination – Exception related to the protection of commercial interests of a third party – Exception related to the protection of the purpose of inspections, investigations and audits – Overriding public interest	Link	
C-127/13 P Strack v Commission	Appeal — Right to be heard — Right to be heard by a court or tribunal established in accordance with the law — Access to documents held by the institutions — Partial refusal to grant the appellant access to the documents concerned — Initial refusal — Implied decision deemed to exist — Replacement of an implied refusal by express decisions — Interest in bringing proceedings after the adoption of the express refusals — Exceptions to the right of access to documents — Safeguarding the interests of good administration — Protection of personal data and commercial interests	Link	
T-306/12 Spirlea v Commission	Access to documents – Regulation (EC) No 1049/2001 – Article 4, paragraph 2, third indent – Requests for information addressed by the Commission to Germany in the framework of an EU Pilot Procedure – Refusal of access – Obligation to carry out a concrete and individual examination – Overriding public interest – Partial access – Obligation to state reasons	Link	
T-516/11 MasterCard v Commission	Access to documents — Regulation (EC) No 1049/2001 — Documents relating to a study of the costs and benefits to merchants of accepting different payment methods — Documents drawn up by a third party — Refusal of access — Exception relating to the protection of the decision-making process — Exception relating to the protection of the commercial interests of a third party	Link	Link
C-350/12 P Council v Sophie in't Veld	Appeal — Access to documents of the institutions — Regulation (EC) No 1049/2001 — Third indent of Article 4(1)(a), second indent of Article 4(2), and Article 4(6) — Opinion of the Council's Legal Service concerning the opening of negotiations for the conclusion of an international agreement — Exceptions to the right of access — Protection of the public interest as regards international relations — Protection of legal advice — Decision partially refusing access	Link	
T-181/10 Reagens SpA v Commission	Access to documents – Regulation (EC) No 1049/2001 – Documents relating to requests that certain undertakings' inability to pay be taken into account in cartel proceedings – Refusal of access – Exception relating to the protection of commercial interests of a third party – Exception relating to the protection of the purpose of inspections, investigations and audits – Overriding public interest – Obligation to carry out a concrete and individual examination – Partial access	Link	Link

C365/12 P Commission v EnBW Energie Baden-Württemberg AG	Appeal — Regulation (EC) No 1049/2001 — Access to documents of the institutions — Documents relating to a proceeding under Article 81 EC — Regulation (EC) No 1/2003 and Regulation (EC) No 773/2004 — Access refused — Exceptions relating to the protection of investigations, commercial interests and the decision-making process of the institutions — Obligation upon the institution concerned to carry out a specific, individual examination of the content of the documents covered by the request for access	Link	Link
T-561/12 Beninca v Commission	Access to documents — Regulation (EC) No 1049/2001 — Document drawn up by the Commission in the context of the merger between Deutsche Börse and NYSE Euronext — Refusal to grant access — Exception relating to the protection of the decision-making process	Link	
C-280/11 P Council v Access Info Europe	Appeal — Right of access to documents of the institutions — Regulation (EC) No 1049/2001 — Article 4(3), first subparagraph — Protection of the institutions' decision-making process — Note from the Council General Secretariat on the proposals submitted in the course of the legislative process for the revision of Regulation No 1049/2001 — Partial access — Refusal of access to information relating to the identity of Member States which put forward proposals	Link	Link
T-380/08 Netherlands v Commission (Bitumen)	Access to documents — Regulation (EC) No 1049/2001 — Request seeking to obtain access to certain confidential passages of the final decision of the Commission relating to a cartel — Refusal of access — Obligation to state reasons — Obligation to carry out a specific, individual examination — Exception concerning the protection of privacy and the integrity of the individual — Exception concerning the protection of the commercial interests of a third party — Exception relating to the protection of the purpose of investigations — Overriding public interest — Sincere cooperation	Link	
C-477/10 Commission v Agrofert	Appeal - Access to documents of the institutions - Regulation (EC) No 1049/2001 - Documents relating to merger control proceedings - Regulation (EC) No 139/2004 - Refusal of access - Exceptions relating to the protection of the purpose of investigations, commercial interests, legal advice and the decision-making process of the institutions	Link	Link
C-404/10 Commission v Odile Jacob	Appeals - Access to documents of the institutions - Regulation (EC) No 1049/2001 - Documents relating to merger control proceedings - Regulations (EEC) No 4064/89 and (EC) No 139/2004 - Refusal to grant access - Exceptions relating to the protection of investigations, commercial interests, legal advice and the decision-making process of the institutions - Duty of the institution concerned to carry out a concrete, individual examination of the content of the documents covered by the application for access	Link	Link

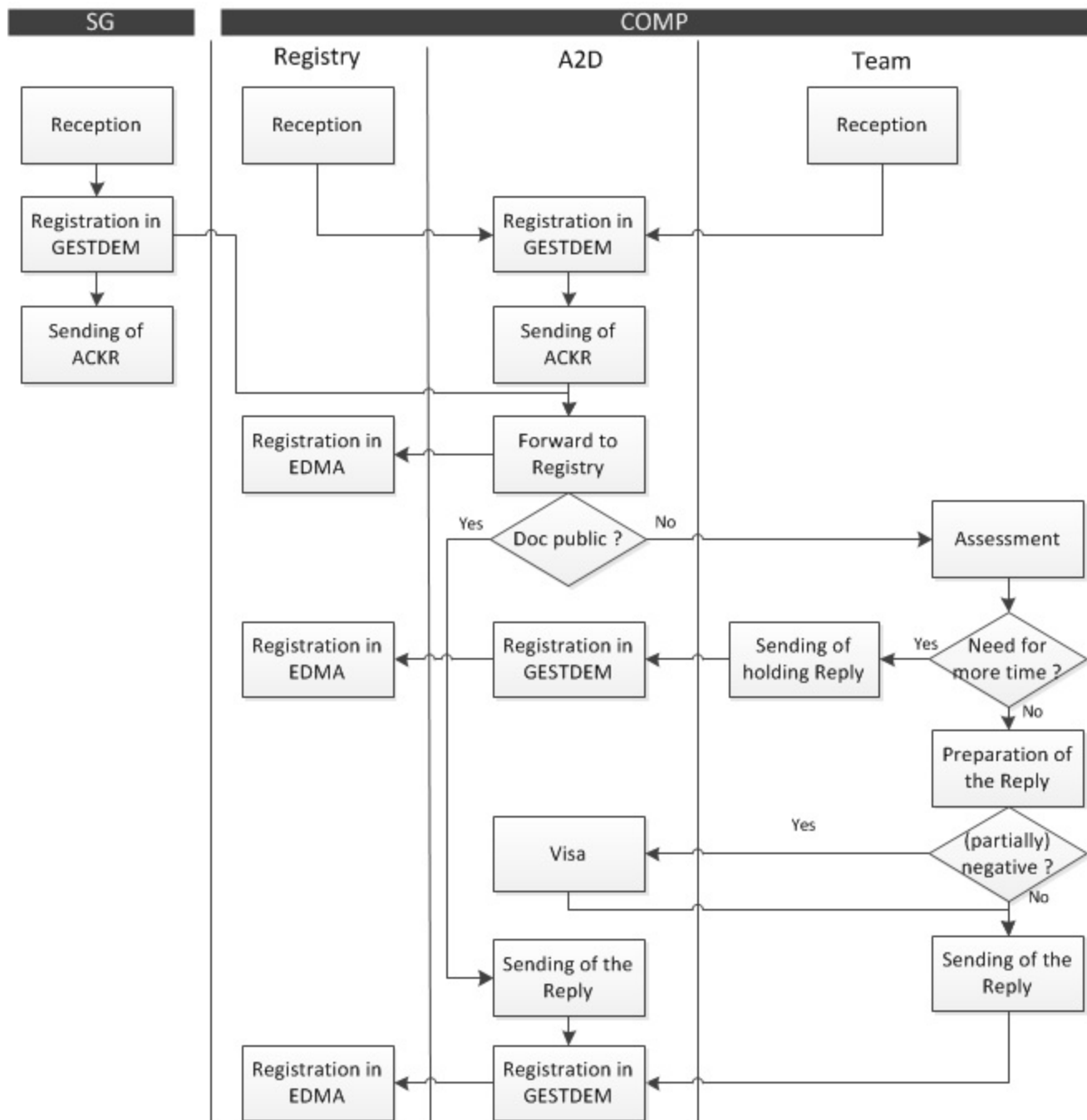
C-360/09, Pfeiderer AG v Bundeskartellamt	Competition – Administrative procedure – Documents and information provided under a national leniency programme – Possible negative effects of third-party access to such documents on the effectiveness and proper functioning of cooperation between the authorities forming the European Competition Network	Link	Link
C-506/08 Sweden v Commission (MyTravel)	Appeal - Access to documents of the institutions - Regulation (EC) No 1049/2001 - Article 4(2), second indent, and Article 4(3), second subparagraph - Exceptions to the right of access concerning the protection of court proceedings and legal advice and the decision-making process - Control of concentrations - Commission documents drawn up in the context of a procedure which led to a decision declaring a concentration operation incompatible with the common market - Documents drafted following the annulment of that decision by the General Court	Link - Opinion AG	Link
C-28/08 Commission v Bavarian Lager	Appeal - Access to the documents of the institutions - Document concerning a meeting held in the context of a procedure for failure to fulfil obligations -Protection of personal data - Regulation (EC) No 45/2001 - Regulation (EC) No 1049/2001	Link	Link
T-437/08 CDC v Commission	Access to documents - Regulation (EC) No 1049/2001 - Statement of contents of the administrative file relating to a cartel proceeding - Refusal of access - Exception concerning the protection of the commercial interests of a third party - Exception relating to protection of the purpose of inspections, investigations and audits	Link	
C-514/07 API v Commission C-528/07 API v Commission C-532/07 Commission v API	Appeals - Right of access to documents of the institutions - Regulation (EC) No 1049/2001 - Second and third indents of Article 4(2) - Pleadings lodged by the Commission in proceedings before the Court of Justice and the General Court - Decision of the Commission refusing access	Link	Link
C-139/07 Commission v Technische Glaswerke Ilmenau GmbH	Appeals - Access to documents of the institutions - Regulation (EC) No 1049/2001 - Documents relating to procedures for reviewing State aid - Exception concerning protection of the purposes of investigations - Duty of the institution concerned to carry out a concrete, individual examination of the content of the documents covered by the application for access	Link	Link
C-107/07 Friedrich Weber v Commission	Appeal - Refusal of access to documents - Manifest inadmissibility	Link	
T-111/07 Agrofert v Commission	Access to documents - Regulation (EC) No 1049/2001 - Documents relating to a procedure concerning a merger between undertakings - Refusal to grant access	Link	Link
C-64/05 Sweden v Commission (IFAW)	Court proceedings - limits of exceptions to principle of access	Link	Link - Update
C-39/05 Turco v Council C-52/05 Sweden and Turco v Council	Appeals - Access to documents of the institutions - Regulation (EC) No 1049/2001 - Legal opinion	Link	Link

T-403/05 MyTravel v Commission	Access to documents - Regulation (EC) No 1049/2001 - Refusal to grant access - Exception relating to the protection of the decision-making process - Exception relating to the protection of investigations and audits - Exception relating to the protection of legal advice - Documents relating to decisions of the Commission in the area of concentrations	Link	Link
T-290/05 Weber v Commission	Refusal - Application initiating proceedings - Articles 4(3)b and 4(2)c of Regulation (EC) No 1049/2001	Link	
T-237/05 Editions Odile Jacob v Commission	Regulation (EC) No 1049/2001 - Regulation (EC) No 4064/89 - Regulation (EC) No 139/2004 - Regulation (EC) No 802/2004	Link	Link
T-144/05 Muñiz v Commission	Request relating with the minutes of the September meeting of the Customs Code Committee - Tariff and Statistical Nomenclature Section as well as for access to certain TAXUD documents - Total and partial refusal of access	Link	
T-109/05 NLG v Commission	Appeals - Access to documents of the institutions - Regulation (EC) No 1049/2001 - Documents relating to procedures for reviewing State aid - Exception concerning protection of the purposes of investigations - Duty of the institution concerned to carry out a concrete, individual examination of the content of the documents covered by the application for access	Link	
T-194/04 The Bavarian Lager v Commission	Protection of physical persons in relation to processing of personal data – Regulation (EC) No 45/2001 – Concept of private life –Protection of the purpose of the investigation	Link	Link
T-70/04 Franchet and Byk v Commission	Application for annulment of decisions of the European Anti-Fraud Office (OLAF) and of the Commission refusing the applicants access to certain documents relating to an enquiry concerning Eurostat	Link	
T-36/04 API v Commission	Access to documents - Pleadings lodged by the Commission in proceedings before the Court of Justice and the Court of First Instance - Decision refusing access	Link	Link
T-391/03 Franchet and Byk v Commission	Application for annulment of decisions of the European Anti-Fraud Office (OLAF) and of the Commission refusing the applicants access to certain documents relating to an enquiry concerning Eurostat	Link	
T-187/03 Scippacercola v Commission	Access to documents of the institutions - Article 4(5) of Regulation (EC) No 1049/2001	Link	
T-83/03 Turco v Council of the European Union	Access to Council's legal opinion	Link	
T-2/03 Verein für Konsumenteninformation v Commission	Request relating to a very large number of documents - Total refusal of access - Obligation to carry out a concrete, individual examination - Exceptions	Link	
T-111/00 British American Tobacco International v Commission	Identities of national delegations - Protection of an institution's interest in the confidentiality of its proceedings.	Link	LS Note

T-204/99 (Olli Mattila v Council & Commission)	International relations - exception relating to the protection of the public interest.	Link	
T-191/99 Petrie ea v Commission	Inspections and investigations - Court proceedings - exception relating to protection of the public interest.	Link	
T-123/99 JT Corporation v Commission	Inspection and investigation tasks - exception relating to protection of the public interest.	Link	
C-174/98 & C-189/98 Van der Wal v Commission annuls: T-83/96	Court proceedings - competition cases - exception relating to the protection of the public interest.	Link	
T-14/98 H. Hautala, MEP v. Council	International relations - exception relating to the protection of the public interest - Partial access to documents.	Link	
T-309/97 Bavarian Larger Co. v Commission	Infringement proceedings - exception relating to protection of the public interest	Link	
T-188/97 Rothmans International v Commission	comitology - right of access to comitology documents supported by the Court.	Link	
T-124/96 Interporc Im-und Export GmbH v Commission	Court proceedings - limits of exceptions to principle of access	Link	
T-83/96 van der Wal v Commission	Access to information - Commission Decision 94/90/ECSC, EC, Euratom - Refusal of access - Scope of the exception relating to the protection of the public interest - Court proceedings - Article 6 of the European Convention on Human Rights	Link	

Process

Several groups intervene in the process : the SG, the instrument's Registry, the common R1 Access to document cell ("[ATD](#)"), the [team](#).



Reception of the request

The request can be received through the SG, or directly received in COMP by the Registry or the case team.

Through the SG

Step	Responsible	Action	Additional information
1	SG	Registration of the request in GESTDEM, and attribution to COMP	<p>An alert is sent to COMP ACCESS TO DOCUMENT with Subject : "Gestdem YYYY-NNNN - Name - ATT"</p> <p>YYYY = year NNNN = sequential number Name = Name of the requester ATT = code for attribution</p> <p>The deadline is set to 15 working days</p>

2	SG	SG sends an Acknowledgement of receipts to the requester	
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Directly in COMP

Step	Responsible	Action	Additional information
1	Registry or Case team	Forwarding of the request to COMP ACCESS TO DOCUMENTS	
2	A2D	Registration in GESTDEM	The deadline is set to 15 working days

Localisation of the document(s) & Registration

Step	Responsible	Action	Additional information
1	A2D	Searching of the document a) on the website b) in SG Vista c) elsewhere	
2	A2D	Forwards the Alert to the Registry of the relevant instrument	If needed, additional information about the document will be added (precise description, link to the document if found in SG Vista, ...). The deadline is set to 15 working days.
3	Registry	The Registry will register the forwarded Alert	<p>Metadata :</p> <ul style="list-style-type: none"> Subject : "Gestdem YYYY-NNNN - Name - ATT" Category : AT : "2.18.1 - Access to Document Request" M : "2.38.1 - Access to Documents, Request" SA : "AD - Access to Document" HT : "1.7.1 - Access to Document Request" Deadline : 15 working days Comment : Mention if the Request will be handled by the A2D Filed in the relevant file (Case, HT or Waiting Room), the team will receive a specific alert <p>if Confirmatory request :</p> <ul style="list-style-type: none"> Subject : "CONF Gestdem YYYY-NNNN - Name - ATT" Category : AT : "2.18.4 - Access to Document Confirmatory Request" M : "2.38.3 - Access to Documents, Confirmatory Request" SA : "ADC - Access to Document Confirmatory Request" HT : "1.7.4 - Access to Document Confirmatory Request"

Reply

If the document is public (available on the website or if it has already been provided in Access to Document), the Reply will be taken in charge by A2D. In this case, it will be made clear in the Comment of the email alert.

Reply by A2D team

Step	Responsible	Action	Additional information
1	A2D	Sending of (the link to) the Document to the Requester	

2	A2D	Registration of the Reply in GESTDEM	
2	A2D	Forwards the reply to the Registry of the relevant instrument	
3	Registry	Registration of the Reply in EDMA	Metadata : <ul style="list-style-type: none"> Subject : "Gestdem YYYY-NNNN - Name - POS" (for POSitive reply) Category / Step : AT : "2.18.2 - Access to document Reply" M : "2.38.2 - Access to Documents, Answer" SA : "ADO - Access to Document others" HT : "1.7.2 - Access to document Reply" Filed in the relevant file (Case, HT or Waiting Room), the team will receive a specific alert

Reply by the team

If the document is not public (case document, document on SG Vista, ...), the team will have to assess the confidentiality, and Reply within the deadline (15 working days from the reception in EC) :

- send the document
- refuse access, with arguments referring to the exceptions
- provide a non-confidential version of the document

In some situations (complex or huge request), the deadline can be extended by 15 additional working days by the means of a Holding Reply.

Step	Responsible	Action	Additional information
1	Team	Assessment of the Reply	
Holding Reply			
2	Team	If more time is needed, the team can send an Holding Reply (cc: COM P ACCESS TO DOCUMENTS + the relevant registry)	Possible causes : <ul style="list-style-type: none"> • Huge volume of documents • Confidentiality negotiations with third party or MS See Holding Reply template.
3	A2D	Registration of the Holding Reply in GESTDEM	
4	A2D	Forwards the Holding Reply to the Registry of the relevant instrument (if it was not in cc:)	
5	Registry	Registration of the Holding Reply in EDMA	Metadata : <ul style="list-style-type: none"> Subject : "Gestdem YYYY-NNNN - Name - H-REP" (for Holding REPLY) Category / Step : AT : "2.18.3 - Access to document Holding Reply" M : "2.38.2 - Access to Documents, Answer" SA : "ADO - Access to Document others" HT : "1.7.3 - Access to document, Holding Reply" Filed in the relevant file (Case, HT or Waiting Room), the team will receive an alert
Reply			

6	Team	Preparation of the Reply	Links : <ul style="list-style-type: none"> Quick tips on the substance Legal guidance
7	Team	If the Reply is (partially) negative, it needs the Visa of COMP ACCESS TO DOCUMENTS	
8	Team	Sending of the Reply (cc: COMP ACCESS TO DOCUMENTS + relevant registry)	
9	A2D	Registration of the Reply in GESTDEM	
10	A2D	Forwards the reply to the Registry of the relevant instrument (if it was not in cc:)	
11	Registry	Registration of the Reply in EDMA	Metadata : <ul style="list-style-type: none"> Subject : "Gestdem YYYY-NNNN - Name - POS/NEG/PART REP" POSitive REPLY NEGative REPLY PARTially negative REPLY Category / Step : AT : "2.18.2 - Access to document Reply" M : "2.38.2 - Access to Documents, Answer" SA : "ADO - Access to Document others" HT : "1.7.2 - Access to document Reply" Filed in the relevant file (Case, HT or Waiting Room), the team will receive a specific alert if Confirmatory request : <ul style="list-style-type: none"> Subject : "CONF Gestdem YYYY-NNNN - Name - POS/NEG/PART REP" POSitive REPLY NEGative REPLY PARTially negative REPLY Category : AT : "2.18.5 - Access to Document Reply to Confirmatory Request" M : "2.38.2 - Access to Documents, Answer" SA : "ADO - Access to Document others" HT : "1.7.5 - Access to document Reply to Confirmatory Request"