

Fiche 3

Access to draft impact assessment reports

Main issues:

- The implementation of the Better Regulation Package, adopted by the Commission on 19 May 2015, envisages changes in the way impact assessments of legislative proposals are being prepared. A new Regulatory Scrutiny Board that examines draft impact assessments was set up. The **final version of the impact assessment report** and **its summary**, as approved by the Regulatory Scrutiny Board, are public. Given that these documents are provided proactively by the Commission, they fall outside the scope of Regulation 1049/2001.

Current administrative practice:

The Commission has been refusing access to (preliminary) drafts of impact assessment reports concerning legislative proposals and internal exchanges between Commission services in the framework of draft impact assessments, at least as long as the legislative decision-making process to which the report relates is still on-going (i.e. until the policy initiative has been either adopted or abandoned).

The Commission considers that such documents need to be protected until the proposal is adopted by the Union legislature and our practice is to refuse access to draft impact assessments also while the inter-institutional decision-making process is pending.

Such refusals are based on the exception laid down in the first subparagraph of Article 4(3) of Regulation 1049/2001 relating to the protection of the ongoing decision-making process.

The General Court has recognised a general presumption of non-disclosure to documents drawn up in the context of preparing an impact assessment, as such disclosure would, in principle, seriously undermine the Commission's decision-making process for developing a policy proposal (regardless of the nature of such a proposal – legislative or otherwise).

Case-law:

- See Judgement of the General Court in Jointed Cases T-424/14 and T-425/14 *ClientEarth v. Commission*.

Reference documents/links:

- Examples of confirmatory decisions and a summary of the relevant case-law are available on the Commission's access-to-documents webpages on *My Intracomm*¹;
- The full text of judgments of the EU Courts can be consulted on the website of the ECJ: www.curia.eu.

February 2016

¹ <https://myintracomm.ec.europa.eu/sg/docinter/Pages/tools.aspx>.