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 DIRECTORATE GENERAL
 ECONOMIC AND FINANCIAL AFFAIRS
 Resources
 HR, business correspondent, business continuity and control

MANUAL FOR HANDLING ACCESS TO DOCUMENTS REQUESTS

DG ECONOMIC AND FINANCIAL AFFAIRS (DG ECFIN)

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INTRODUCTION

The purpose of this manual is to provide guidance to colleagues in DG ECFIN dealing with access to documents requests. This manual is a guide for handling standard cases, describing the usual workflow. In specific circumstances, other solutions than those proposed in the manual may be envisaged, in consultation with the ECFIN-ACCESS-TO-DOCUMENTS-TEAM (ECFIN/ADT), located within unit R.1 in the Resources Directorate.

Regulation 1049/2001¹ sets out the conditions and limits for exercising the public right of access to documents of the three main institutions of the EU, established by Article 15(3) of the TFEU. As a principle, Members of the public (citizens, undertakings and private organisations) have a right to request access to any document² held by the respective EU institution. Access can only be refused if specific *exceptions* apply³, which means that disclosure would harm a specific public or private interest, such as public security, privacy, commercial interests, legal proceedings and investigations.

¹ Regulation (EC) N° 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145/43 of 31.5.2001, with detailed rules in Commission Decision 2001/937 of 5 December 2001, OJ L 345/94 of 29.12.2001, amending its rules of procedure, which lays down the procedures for the handling of requests for access to documents by the Commission.

² See the definition of a document below in Chapter III.2.

³ These exceptions are listed in Article 4 of Regulation 1049/2001.

I. THE KEY ACTORS

The main actors in the process are:

The operational service chef de file (operational CdF) for the request, which must correspond with the applicant, identify and assess the documents requested and prepare the replies (positive or negative). The operational CdF can be any entity that is part of DG ECFIN: directorate, unit, or the Cabinet of the Commissioner in charge of DG ECFIN. Exceptionally, where requests aim at a cross-cutting subject or concerns a multitude of services, unit R.1 may decide that the ECFIN/ADT takes the lead for handling a request.

The ECFIN/ADT registers, attributes and monitors access to documents requests for the whole DG. It gives administrative and legal support to the operational entity to which the request has been attributed (operational 'Chef de File' (= Cdf), see below) and ensures full legal compliance⁴.

II. PROCEDURE FOR HANDLING INITIAL ACCESS TO DOCUMENTS REQUESTS

The procedure for the handling of access to documents requests is structured in three different phases:

1. Preliminary examination and registration of the request by the ECFIN/ADT;
2. Treatment of the request by the operational CdF;
3. Reply to the request.

1. Preliminary examination and registration of the request by the ECFIN/ACDC

The ECFIN/ADT examines all requests received by any channel (via the electronic form on the EUROPA-server, external emails etc.)⁵. This examination should be normally performed as soon as the request arrives, at the latest the next working day. Then the request is attributed to the operational CdF with an attribution email, to which (if

⁴ In the sense of fully meeting the requirements of Regulation 1049/2001.

⁵ Checking first whether DG ECFIN is the responsible department within the Commission, then whether the request is for access to a "document" in the meaning of Regulation 1049/2001 or a request for information included in a document. It also determines whether the applicant is entitled to lodge a request (citizen, private organisation) or whether it is coming from a public authority (then, the "sincere cooperation" procedure applies) and whether a full postal address has been indicated. If necessary, the ECFIN/ADT clarifies these issues with the applicant before attributing the request to the operational CdF or the Cabinet.

available) the original request and the acknowledgment of receipt (if already generated by the GESTDEM-database) are attached.

2. Treatment of the request by the operational CdF

Deadlines

Replies to an applicant must be within 15 working days of the date of registration of the request. For complex requests, the deadline can be extended by another 15 working days but this is only possible once; the applicant must be informed by email that this extension is being made. No reply should take longer than 30 days. In exceptional cases, if even that is not possible, another holding reply (by email or by letter) must be sent to the applicant, explaining why the extended deadline cannot be respected and indicating a reasonable time horizon for the reply.

It is important to send the holding reply at the latest on the last day (end of business) of the expiring delay (to avoid that applicants who might have a confirmatory request already 'in the drawer' would send it immediately the day after for 'non-action' of the Commission).

When the initial deadline of 15 working days approaches, ECFIN/ADT will send a reminder to the operational CdF.

Acknowledgment of receipt

In case the acknowledgment of receipt has not yet been sent (by the GESTDEM-database or another DG), the operational CdF sends it to the applicant, in principle by email, as soon as possible after attribution of the request. A template is attached to this Manual.

An acknowledgment of receipt is not however necessary if the reply to the applicant is provided within three working days of the reception of the request.

Examination of the scope and clarity of the request

In case the request appears prima facie too voluminous or is unclear, the operational CdF refers it back to the applicant, asking the applicant to limit or clarify their request (ECFIN/ADT can help with the drafting). The procedure is then suspended until the applicant's reply is received; the applicant is informed about that suspension.

Identification of the document requested and assessment as to whether the document should or not be disclosed to the public are the responsibility of the operational CdF. In specific cases several operational CdFs may be identified for a single request.

Identification of requested document(s)

A 'document' in the meaning of Regulation 1049/2001 covers any content whatever its medium (written on paper or stored in electronic form as an email or sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and

decisions falling within the institution's sphere of responsibility⁶ (drawn up or received by DG ECFIN and in 'our' possession). The importance of the content, whether it is registered (in Ares) or not and the way in which it is presented - **even if it is marked or classified**⁷ - are irrelevant. This covers as well content of databases, which can be extracted by normal operations. However, access is granted only to *existing* documents, in an existing version and format (there is no obligation to *create* or *translate* documents).

*The Secretariat-General and the Legal Service have updated guidelines to identify which documents are of importance and should consequently be registered in Ares and equivalent applications⁸. Whether documents requested by an application exist or not is defined by what has been recorded. The guidelines also define **“What is a ‘document held by the European Commission’?”**: “provided the registration criteria are applied correctly, only registered documents fall under the scope of Regulation (EC) No 1049/2001.”⁹*

If the operational CdF can identify the document requested given the description provided by the applicant, the operational CdF tries to locate the document in available applications (i.e. ARES, Adonis, VISTA). Where requests are unspecified (i.e. "all documents related to..."), the operational CdF requests a comprehensive search via the DMO or the ARES team in SG/DIGIT. In case of older documents, the operational CdF consults the Historical Archives via their Functional mailbox OIB ARCHIS BASE.

Internal consultation

In case of difficulties or questions (e.g., what steps to take, what exceptions are possible¹⁰, whether a consultation of another department in the Commission, Member States, third parties or another EU-Institution is necessary), the operational CdF can discuss the request with the ECFIN/ADT.

If appropriate, third parties, SG, LS and/or other DGs may be consulted. The operational CdF conducts consultations of other departments in the Commission concerned by the document in question. The ECFIN/ADT consults the Secretariat-General or the Legal Service, if necessary.

RRF-related requests

DG ECFIN has agreed on a burden sharing with the Task Force SG-RECOVER concerning the RRF-related/country specific requests. These requests can be large in time

⁶ See Articles 2 and 3 of Regulation N° 1049/2001 (scope of application).

⁷ For details see the new Security Notice “Marking and handling of sensitive non-classified information”, C(2019) 1904 final of 5 March 2019.

⁸ Note from SG and LS to Directors-General and Heads of Service, Ares(2018)5874624 of 16/11/2018, with ‘Guidelines on document registration’ attached, replacing the previous guidelines from 2015.

⁹ See Guidelines, point 1).

¹⁰ On the basis of Art. 4 of Regulation 1049/2001.

and volume and require an extra careful consultation between country-desks within DG ECFIN and between DG ECFIN and SG-RECOVER, to ensure consistency and equal treatment of the replies.

Specific **Guidelines**¹¹, issued by SG-R (and also used by DG ECFIN) for this special category of requests and regularly updated following the implementation of the RRF, should be consulted complementary to this Manual.

The ECFIN-Access-to-documents *Legal-coordinator* is in charge to liaise with SG-RECOVER at horizontal level for the distribution of the newly incoming requests and can be consulted regarding the application of the Guidelines.

3. Reply to the request

The examination of the request normally ends with the successful identification of documents falling under the request¹² and their assessment with a view to public disclosure or non-disclosure (fully or partially). The operational CdF prepares the reply to the request (to provide access, or not, fully or partially, to the documents requested). The reply can be:

- positive (document disclosed),
- negative (document not disclosed),
- partially negative (document only partially disclosed) or
- a statement that the document was not found/does not exist (so-called "devoid of purpose" reply).

The GESTDEM-database has been integrated into Ares.¹³ This integration has the effect that every document registered in GESTDEM is now automatically registered and archived in Ares. As a consequence, there is no longer a double encoding required, which reduces the administrative burden for the case handling units and coordinators considerably.

PRACTICAL EXAMPLES

Positive reply (document disclosed)

Commission staff working document: Analysis of the draft budgetary plans of Slovakia, SWD (2016) 517 final

Negative reply (document(s) not disclosed)

¹¹ Latest version attached to this Manual.

¹² In case of a larger number of documents, a list of the documents in question should be drawn up (WORD or EXCEL-table).

¹³ Note from SG to Directors-General and Heads of Service, Ares(2017)5417721 of 07/11/2017 (FR).

Commission documents drafted and/or published in relation to Article 3(2) of the Treaty on Stability, Coordination and Governance (TSCG).

Exceptions applied:

Disclosure of the documents would undermine the protection of the purpose of an ongoing investigation (Article 4, paragraph 2, 3rd indent) and undermine the decision-making process of the Commission (Article 4, paragraph 3, 1st paragraph).

Partially negative (document only partially disclosed)

Décision d'exécution (référence C(2016) 1434 final) de la Commission du 10.3.2016 étendant la garantie de l'Union à certaines opérations de financement et d'investissement conformément à l'article 24, paragraphe 2, du règlement (UE) 2015/1017 du Parlement européen et du Conseil. [concerning certain EFSI-guaranteed projects]

Exceptions applied:

Disclosure of the documents would undermine the protection of commercial interests (Article 4, paragraph 2, 1st indent) and the purpose of an ongoing investigation, (Article 4, paragraph 2, 3rd indent).

Statement that the document was not found/does not exist (so-called "devoid of purpose" reply)

Agenda and minutes of meetings and all correspondence between DG ECFIN and the Spanish Government/Spanish Authorities between 1st May 2013 and 1st July 2013 in which taxation of tobacco products was discussed.

As specified in Article 2(3) of Regulation 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

A *positive* reply can be a simple email signed by the responsible Head of Unit (or in his or her name)¹⁴ sent before the end of the initial 15 working days deadline. Standard templates provided by the SG (in all official languages) available [here](#) should be used.

In the case of a *partially negative* reply, redactions (blackening) of text in the documents to be disclosed shall be made using ACROBAT READER PROFESSIONAL, indicating the exceptions¹⁵ which are pertinent for each paragraph of redacted text (in case more than one exception applies). This should be done in consultation with the ECFIN/ADT.

¹⁴ For requests concerning documents of the Cabinet it is the member responsible for handling of access to documents requests, unless the task to reply is assigned to the ECFIN-access-to-documents-team (reply from the Functional mailbox).

¹⁵ The exceptions are listed in Article 4 of Regulation N° 1049/2001 (see footnote 3).

Apart from *positive* replies, **all replies (including the ‘no documents found’ reply)** must take the form of a letter signed by the Director General¹⁶. As a standard practice, a short explanatory note should be added to the reply in the e-signatory, giving details, for instance regarding

- the background of the documents,
- the reasons for refusal and
- the search/consultation steps that have been taken.

Reply letters (with or without the documents attached) are sent by e-mail. You may request to confirm reception per email (as proof of reception).

➤ *The requirement to send the by registered postal mail, with an Acknowledgement of Receipt (AoR), for reasons of legal proof of reception, has been suspended for the duration of the pandemic.*

However, there is one exception:

→ *HANDLING OF PERSONAL DATA*

If only **personal data** is redacted in a document which, apart from that, is fully released (here again, it can be sent by the unit in charge).

It is very important not to release any personal data (information) which requires protection under the new Internal Data Protection Regulation 1725/2018. This includes in particular also the names of our staff members (except Senior managers and Cabinet members). For details, you may consult the relevant → Newsletter from the Secretariat-General¹⁷. In case of doubt, consult the ECFIN-Access-to-documents-team/Data Protection Coordinator. You must validate the redacted documents with the ECFIN-ADT and/or the ECFIN-Data Protection Coordinator (DPC), to avoid any possible data breach.

Model letters are provided [here](#).

¹⁶ Or, in exceptional cases, by the Head of the ECFIN Commissioner's Cabinet with regard to documents held by the Cabinet, unless the Cabinet prefers that a reply is given by the Director-General, in line with normal practice.

¹⁷ Newsletter N° 41 of 6 December 2018, Revised documents following new Data Protection Regulation 2018/1725, with two attachments. [file:///U:/R3%20\(Internal%20control%20-%20former%20R3-R4\)/7.%20Access%20to%20Documents%20+%20Information/1%20GENERAL/Secretariat-General/Newsletters/ATD_Info41_Data%20Proection%20\(NEW\)EN.pdf](file:///U:/R3%20(Internal%20control%20-%20former%20R3-R4)/7.%20Access%20to%20Documents%20+%20Information/1%20GENERAL/Secretariat-General/Newsletters/ATD_Info41_Data%20Proection%20(NEW)EN.pdf)

III. CONSULTATIONS BY OTHER EU-INSTITUTIONS

If documents originating from other Institutions are requested (Council, EP) that other institution has to be consulted in accordance with the *Memorandum of Understanding* of 2002 between the Council, EP and Commission (reaction within 5 working days required). Likewise, any such request from the Council or European Parliament Secretariat-General has to be replied to within the same period of time. The ECFIN/ADT acts as intermediate and transmits any request or contribution to the operational CdF.

IV. ORGANISATIONAL ISSUES

Functional mailboxes

The functional mailbox ECFIN-ACCESS-TO-DOCUMENTS should be used for all correspondence related to handling of access to documents requests between operational services and the ECFIN-ADT. If personal mailboxes are used, the functional mailbox should be in Cc.

Initial replies, once signed by the Director-General or the Head of unit, should be sent to the applicant from a functional mailbox of the unit (and not from the personal account of the case handler).

Correspondents-network with the Directorates and use of ACROBAT READER PROFESSIONAL

It has been decided end of 2021 in the Directors' meeting to set up a Correspondents-network with the Directorates, in order to reinforce knowledge on the A-t-D-requests procedures. The ECFIN-ADT will liaise with colleagues whenever new instructions and information need to be distributed.

Likewise colleagues in the Directorates have been identified, who will be trained to master the ACROBAT READER PROFESSIONAL-tool for redactions of documents. The ECFIN-ADT can be consulted to know is available 'next to you' as case handler.