



Access to documents requests ECFIN Correspondents training

Organiser: ECFIN-Access-to-documents-team (unit R.1)

Introductory remarks: [REDACTED], Head of Unit R.1

Guestspeaker: [REDACTED], Assistant to the Director-General, SG-Recover

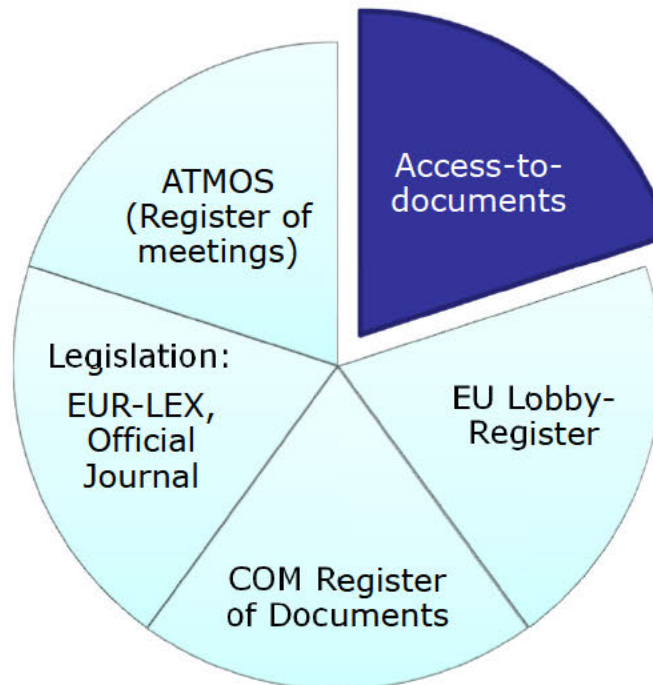
[REDACTED] – ECFIN-ATD-team, Legal Coordinator, Unit R.1

[REDACTED] – ECFIN-ATD-team, Administrative Coordinator, Unit R.1

DG ECFIN 2022

last update: 08/03/2022

Transparency Instruments



Content

1. Legal framework (slide 4)
2. Scope of Regulation 1049/2001 (slides 5-7)
3. Principles and exceptions from disclosure (slide 8)
4. Exceptions (slides 9-13)
5. Procedures (slides 14-26)
 - a. General (slides 14-23)
 - b. Example (slides 24-26)
 - c. The role of the Correspondents (slide 27)
 - d. RRF-related requests: Burden sharing with Task Force SG-Recover (slide 28)
 - e. Administrative recommendations (slide 29)
6. Some figures (slide 30)
7. Further information (slide 31)

1. Legal Framework

- **Article 15(3) TFEU + Article 42 Charter of Fund. Rights**
- **EP and Council Regulation 1049/2001 (R)**
- **Commission Decision 2001/937 (D)**
- **Jurisprudence of the European Courts**
- **Instructions from the Secretariat-General**
(notes from Secretary-General, newsletters and fiches from unit SG.C.1)

Environmental matters

- **Aarhus Convention (access to information, public participation in decision-making and access to justice in environmental matters) =**
- **Regulation 1367/2006 (A)**

2. Scope of Regulation 1049/2001

Access to documents request or a request for information?

Access to documents requests are dealt with under Regulation 1049/2001.

Requests for information are dealt with under the *Code of Conduct of Good Administrative Behaviour* (OJL 308/32 of 8.12.2000) for staff of the European Commission in their relations with the public (+ ECFIN Guidelines, Ares(2018)3714695 - 12/07/2018).

If the requested information is not contained in any existing documents, or if replying would involve compiling information from a number of different documents, the application should be considered a request for information.

Wide personal scope: beneficiaries

- **Any natural or legal person (no limitation to EU!)**

Art. 2(1) and 2(2) of Regulation 1049/2001 and Art. 1 of Implementing Decision

- **No obligation to give reasons for the request**

Art. 6(1) of Regulation 1049/2001

- **No privileged access**

Ex: MEPs and their staff to be treated like all other members of the public

- **Member States national (or subnational) authorities are not among the beneficiaries of Regulation 1049/2001.** Such requests should be dealt with according to the principle of sincere cooperation laid down in Article 4(3) TEU.

Wide material scope

- All documents drawn up or received in all areas of activity [Art. 2(3) R]
- Very wide definition of a “document”: any content whatever its medium (**even database or audio content!**) [Art. 3(a) R]
- Access is granted to **existing documents** in an existing version and format (no obligation to create or translate documents [Art. 10(3) R]!)
- Also documents in the archives, if not older than 30 years

3. Principles and exceptions from disclosure

- **Principle of transparency: documents are accessible unless an exception applies (the exceptions are listed in Art. 4 of Regulation 1049/2001)**
- **Exceptions to be applied narrowly**
- **Concrete and individual examination of documents falling under the scope of the request (no more, no fewer documents than requested)**
- **No exempt categories (unless a presumption of non-disclosure by verdict of the European Courts applies), not even classified or sensitive documents (Art. 9 of Regulation 1049/2001)**
- **Exceptions apply as long as protection is justified, up to 30 years**

4. Exceptions

Absolute exceptions

In case of harm, access is denied

Relative exceptions

Double test:

Harm ?

Overriding public interest in disclosure ?



Absolute exceptions

Protection of the public interest [Art. 4(1) a R]

Public security

Defence and military matters

International relations

Financial, monetary or economic policy of the EU or a Member State

Protection of personal data [Art. 4(1) b R]

Privacy and integrity of the individual in particular in accordance with legislation regarding the protection of personal data [Regulation 45/2001]

Protection of personal data

- Access to documents and personal data protection are equivalent rights
- Requests for access to personal data to be examined under both Regulations 1049/2001 and 1725/2018
- Applicant must establish the need for disclosure

In practice: Personal data to be redacted in documents to be disclosed (except for personalities with a function known to the public, like ministers, CEOs)

Commission staff:

Access can be granted to the names and functions of Commissioners, their *Cabinet members* and staff in *Senior management* positions. For other staff members only if a clear need is established and there are no reasons to assume that the legitimate rights of the colleagues concerned might be prejudiced (Guidance note, SG-Newsletter n° 19 of 27 March 2015)

- More details: SG Newsletters Nr 41 and 42 (December 2018)

Relative exceptions (1)

Protection of commercial interests, Art. 4(2), first indent, R

Access refused, if disclosure would affect the competitive position, the reputation or intellectual property rights of a person or a company

Court Proceedings and legal advice Art. 4(2), second indent, R

Documents drafted for the proceedings/legislative + non-legislative opinions

Inspections, Investigations, Audits, Art. 4(2), third indent, R

(Infringement-, State aid-, audit- and competition procedures)

Access refused, if disclosure would undermine the purpose of ... (Jurisprudence: General presumption of inaccessibility for certain types of investigations)

Unless there is an overriding public interest in disclosure!

Relative exceptions (2)

Decision-making process, Art. 4(3), R

(legislative work, administrative and budgetary decisions, Proceedings of Selection Board and evaluation committees)

Documents drawn up for internal use or received **before the decision has been taken** [Art. 4(3), 1st subparagraph, R]

Documents containing opinions for internal use even **after the decision has been taken** [Art. 4(3), 2nd subparagraph, R]

Access is refused, if disclosure would **seriously undermine** the decision-making process, unless there is an overriding public interest in disclosure.

5. Procedures

GENERAL (→ *ECFIN MANUAL, update 1 February 2022*)

Handling of initial applications

Internal Procedures DG ECFIN

Documents from third parties and other EU-Institutions

Documents from Member States

EU Documents in Member States

Partial Access

Sensitive documents

Confirmatory Applications

Means of redress (Remedies)

Handling of Initial Applications

Initial requests to be treated by the DG or Service concerned [Art. 6, D]

Within ECFIN: centralised dispatching, but decentralised treatment!

Time limit: 15 working days + extension with 15 working days [Art. 7(3), R]



Internal Procedure DG ECFIN (1)

Request arrives per electronic form on EUROPA-website or via email (external platforms like 'Ask-the-EU'); AoR automatically generated

ECFIN-Access-to-documents-team checks ECFIN competence, identifies applicant and responsible unit

ECFIN-Access-to-documents-team sends email with attribution to responsible unit (deadline for response indicated)

Internal Procedure DG ECFIN (2)

Responsible unit identifies the documents covered by the request, assesses disclosure and prepares the reply (positive or (partial) negative).

- **If request not precise: ask for clarifications**
[Art. 6(2), R]
- **Voluminous request: find “fair solution”**
[Art. 6(3), R]

Responsible unit launches the *e-signatory* (A-t-D-team may advise drafting the reply).

Internal Procedure DG ECFIN (3)

If positive, transmission by email of the Unit is sufficient (use of FMB!), including release of documents where only personal data is redacted (Note of the Secretary-General, Ares(2014)3950212 of 26/11/2014 in Newsletter n° 11 of 2 December 2014)

All other (negative, partially negative or 'no documents held') replies to be signed by the Director General

- Add short explanatory note for Maarten with background info and how the case has been dealt with
- Refusals must be motivated [Art. 7(1), R]; redactions have to be linked to the relevant exception that applies
- Applicant must be informed of right to request a review - confirmatory application (same Art.)

Please always copy the ECFIN AtD-team (functional mailbox or virtual entity in Ares)

Don't forget the Re-use disclaimer

You may reuse the document requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of the document. Please note that the Commission does not assume liability stemming from the reuse.

(Commission Decision 2011/833/EU of 12 December 2011
on the reuse of Commission documents, OJ L 330/39)



Special situations

- **Documents originating from third parties and other EU-Institutions (Art. 4(4), R + Memorandum of Understanding of 2002)**
- **Documents originating from Member States (Art. 4(5), R)**
Consult MS' authorities, refuse if they object to disclosure
- **EU Documents in possession of Member States (Art. 5, R)**
- **Partial Access (Two ways: to some of the documents identified/ to only a part of a documents)**

Sensitive documents

"Sensitive documents" = Mostly documents from public authorities

Classified as "EU Confidential" "EU Secret" or "EU Top secret UE" in accordance with security rules in the areas of: (...) financial, monetary or economic policy

(Commission Decision (EU, Euratom) 2015/444 on the security rules for protecting EU classified information OJ L 72 of 17 March 2015, p. 53).

- a. Handling by authorised staff**
- b. Refusal based on the exceptions laid down in Article 4**
- c. Disclosed only with consent of originator**
- d. In ECFIN marking very rare**

[Article 9, R]

Appeal ('Confirmatory Applications')

To be submitted to the Secretary-General within 15 working days of receipt of the initial reply [Art. 7(2), R]

- **Time limit: 15 working days + extension with 15 working days [Art. 8(2), R]**
- **Secretary-General decides by delegation from the College [Article 4, 1st subparagraph]**
- **DG (ECFIN) to contribute by note of Director-General, certifying which documents falling under the request [Article 4, 2nd subparagraph and SG-instruction]**
- **Legal Service approval required [Article 4, 3rd subparagraph]**



Remedies

- **Complaint to the European Ombudsman**
(leading to inquiries; correspondence to be replied by the President)
- **Proceedings before the General Court of the EU**
(with possibility of review by the Court of Justice)



Example (initial request/acknowledgment of receipt)

Please do not reply, this is an automatically generated email by RegDoc.

GestDem document access request **2016/1786** from [REDACTED]

Notification : On the 10/04/2016, a request for access to the documents below has been recorded under the GestDem reference 2016/1786 in the GestDem database.
Please reply by 02/05/2016 (or postpone the date before this deadline).
An acknowledgement has been sent to the requestor.

See the document on Regdoc: [click here](#)

SG.B4 [SG ACCES DOCUMENTS](#)

First name:	[REDACTED]
Surname:	[REDACTED]
Business domain:	Academic sector
Organisation:	[REDACTED]
Email:	[REDACTED]
Address:	[REDACTED]
Country:	[REDACTED]
Requested document:	C(2015)8148/F1
Type:	C
Year:	2015
Number:	8148
Version:	F1
Responsible Directorate-General or service:	ECFIN - DG Economic and Financial Affairs
Language requested:	English
Language (EN or FR) if the language requested is not available:	English

Dear Sir,

Thank you for your email of 1st March 2022. We hereby acknowledge receipt of your application for access to documents, which was registered on 02/03/2022 under reference number GESTDEM 2022/1275.

In accordance with Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, your application will be handled within 15 working days.

The time limit will expire on 23 March 2022. In case this time limit needs to be extended, you will be informed in due course.

For information on how we process your personal data visit our page [Privacy statement – access to documents](#).

Yours faithfully,

ACCESS TO DOCUMENTS TEAM (IC)



European Commission
Secretariat-General
SG.C1 (Transparency, Document Management and Access to Documents)
sg-Acc-Doc@ec.europa.eu

Example – attribution email

Dear colleagues,

DG ECFIN has received a request, **2022/.... (xxx)**, attached herewith, made under the Regulation 1049/2001, for access to the following document:

Code : C(2021)9972/F1

Title : COMMISSION IMPLEMENTING DECISION on the authorisation of the disbursement of the first instalment of the non-repayable support for Spain



The requested document has been identified in VISTA and is attached herewith.



C(2021)9972/F1...

Could you please assess whether you can identify the documents and if they can be released (or whether the exemptions listed in Art. 4 of Regulation 1049/2001 apply) and reply to the applicant, within the 15 working days from registration until

18/3/2021.

You can renew the deadline once in case of voluminous or complicated requests.

Further guidance can be found on the Access to documents website on My EFCIN.net

<https://myintracomm.ec.europa.eu/dg/ECFIN/ecfinonly/management/icf/Pages/Request-to-access-to-documents.aspx>

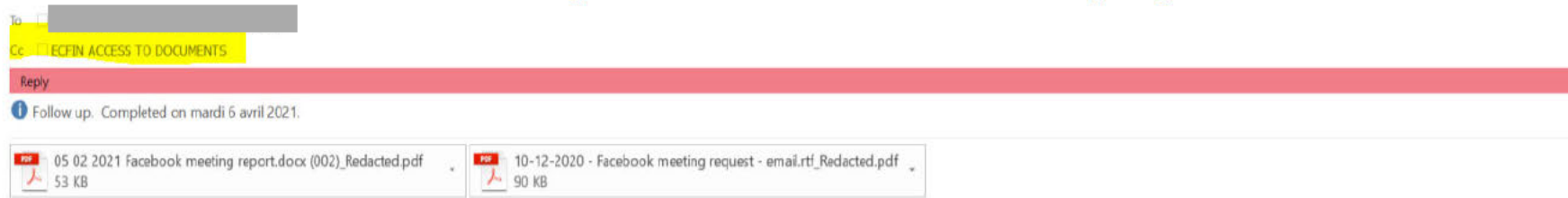
(You will find templates for the reply on the SG Corporate website).

i Redaction of personal data : the ATD team is at your disposal if you need to redact personal data from the documents (or for any other reason), however, if you redact the documents yourself please send them to us for compliance check.

According to Article 3 of the Detailed Rules of Application of Regulation 1049/2001 (Commission Decision 2001/937 of 5.12.2001, OJ L 345, of 29.12.2001) and the Secretary-General's instructions (Note of 26.11.2014 (Ares(2014)3950212), Transparency/Access to documents Newsletter n° 11 of 2.11.2014)

a positive reply (including those where only personal data is redacted in the documents to be released) shall be signed by the Head of Unit or sent in his or her name;

Example – Positive reply



Dear Sir,

We refer to your e-mail dated 09/03/2021 in which you make a request for access to documents, registered on 11/03/2021 under the above mentioned reference number.

We enclose a copy of the documents requested (please note that personal data has been redacted).

You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of the documents.

Please note that the Commission does not assume liability stemming from the reuse.

Yours faithfully,

ECFIN ACCESS TO DOCUMENTS TEAM



European Commission
Directorate-General for Economic and Financial Affairs
Unit R.I – HR Business Correspondent, data protection and security

The role of the Correspondents

- **Get familiar with the procedures**
- **Help finding an ADOBE-assistant, if necessary**
- **Liaise with the ECFIN-ATD-team and desks in the Directorates for new information and instructions**
- **Assist ensuring coherence of replies among country desks (in particular relevant for RRF-related requests)**

Administrative recommendations

- It is highly recommended to send all correspondence with the applicant through the **functional mailbox of the unit**.
- **Virtual entities** in Ares should be also linked with the functional mailbox of the unit, otherwise the response will be sent from your personal account (which we don't want → data protection!). If there is no link, please contact our **DMO-team** in unit R.1 ([redacted] and [redacted]).
- In order to have a proof that the applicant has received the email, it is recommended to use **delivery/read receipt from Outlook** tracking. In Ares, while preparing the external transmission, please tick the box for the read receipt

GENERAL FILING ASSIGNMENT E-SIGNATORY LINK **EXTERNAL TRANSMISSIONS**

Read receipt: ☒ Request a read receipt

- All replies shall be sent via **ARES and receive a number (different treatment for documents already registered)**
- Documents in zipped folder cannot take an Ares number.

Some figures (year 2021)

Number of Requests	
DG ECFIN Requests	87
RRF related requests (DG ECFIN consulted)	92
RRF related requests (DG ECFIN CdF)	5
Consultation requests (other than RRF)	31
Confirmatory requests	1

Attribution of requests per Directorate	
A	4
B	1
C	9
D	5
E	2
F	5
G	6
L	14
R	2
EFC.EPC	2
Access to documents team	29



6. Further Information

CORPORATE

SG on Europa:

http://ec.europa.eu/dgs/secretariat_general/index_en.htm

SG on MyIntraComm:

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

- **Annual Reports of the Commission on the application of Regulation 1049/2001**

DG ECFIN

- **Teams corner (for Correspondents)**
- **ECFIN.net (all staff)**
- <https://myintracomm.ec.europa.eu/dg/ECFIN/ecfinonly/management/icf/Pages/Request-to-access-to-documents.aspx>
- **Annual reports to Senior management**

TRAINING

E-learning on [EU Learn](#)