



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR INFORMATICS

Directorate A – Strategy & Resources
The Director

Brussels
DIGIT.A/ [REDACTED]

NOTE FOR THE ATTENTION OF DIGIT'S STAFF

Subject: Practical information on requests for public access to documents held by DIGIT

1. EXECUTIVE SUMMARY

Any citizen of the Union, or any natural or legal person residing or having their registered office in a Member State, has a right of access to documents of the EU institutions. In DIGIT, we regularly receive access to documents requests. Those requests are centrally handled by Unit A.3. During the last years, we have noticed an increase in these requests due to the extensive use of online portals such as www.asktheeu.org,¹ which facilitate the way citizens can request documents from the European Institutions. Only within the last two years, DIGIT has received approximately 70 requests for access to documents.

The applicable legislation for handling access to documents requests is Regulation (EC) 1049/2001 (the Regulation). The Regulation covers any content, whatever its medium, concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility. According to the guidance of the EC Secretariat General, **the Regulation applies only to documents subject to registration in Ares or any equivalent document management system.**

In principle, all documents requested should be disclosed, unless some exception listed in the Regulation applies. Documents disclosed become essentially public and can be accessed by anyone. For this reason, it is important to understand which Commission documents are subject to registration.

The purpose of this note is to provide you with practical guidance on drafting and registering documents (that may be subject to access to document requests) in the Commission's document management systems. To ensure the smooth handling of the requests we receive, it is important that everyone in DIGIT knows that **the documents we create or receive may be potentially subject to requests for disclosure, even when they are not meant to become publicly available.** Having said that, a proactive approach in

¹ Requests made through the www.asktheeu.org portal are manifestly made public on the website and may easily be accessed by everyone. For example, you may see [here](#) the published requests directed to DIGIT and our corresponding replies.

drafting and registering documents following the Commission's rules will help us achieve good and consistent application of the legislative framework on public access to documents and will facilitate our replies to such requests.

2. BRIEF INTRODUCTION TO REGULATION (EC) 1049/2001 ON PUBLIC ACCESS TO DOCUMENTS

The legal framework dealing with public access to Commission's documents is **Regulation 1049/2001 on public access to documents** and the **Implementing Commission Decision 2001/937**. Below, you will find a brief introduction on the main rules of the Regulation.

2.1. Definition of "document"

According to the Regulation, "**document**" means any content, whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility.

It is thus obvious, that **the definition of document is very broad and could potentially cover any note, briefing, presentation, emails, SMS or other instant messages or any other document drawn by Commission's staff or received by it**. The inclusion of headings such as "Internal", "Draft", "Working Document", "Confidential", "Sensitive" etc. has no bearing on the applicability of the Regulation.

According to the guidance provided by the Secretariat General², the Regulation applies only to documents, **which have been registered in Ares or any equivalent document management system (e.g. ABAC, BASIS, CIRCABC, Decide etc.), provided that the registration criteria are applied correctly**.

This practically means that, when we are requested to disclose a document, we only need to check whether this document is registered in a document management system. However, **if the criteria for registration have not been applied correctly and a document, which should have been registered, is not registered**, this document still falls within the scope of the Regulation **and should be disclosed upon request**. It is important to note here that non-registration of a document, which should be registered, cannot be used as an argument to avoid disclosure in case it is requested. In this case, the lack of registration would only increase the administrative burden of retrieving the document by the responsible team.

For more information on the registration criteria, please see section 3.1.

2.2. The rule

According to the Regulation **any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation ("principle of transparency")**. The institutions may, subject to the same principles, conditions and limits, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.

The applicant has the right to access documents held by the Commission **without the need to establish a reason or a legitimate interest for such access**. The disclosure is not privileged and it is not related to the position of the applicant. Please note that disclosure of a document as a result of an access to documents request means **that the documents become essentially public and thus, can be accessed by anyone**.

² [Guidelines document registration.pdf \(europa.eu\)](#)

2.3. The exceptions

It follows from the above, that the Regulation has a wide material scope and, in principle, documents drawn or received by the Commission would be made public.

As a matter of exception, the Commission may refuse public access to documents **only in the cases exhaustively listed in the Regulation**. These exceptions must be interpreted narrowly, to allow for maximum transparency of the Commission documents.

Article	Exception	Comments
4(1)(a)	the public interest as regards: <ul style="list-style-type: none"> - public security, - defence and military matters, - international relations, - the financial, monetary or economic policy of the Community or a Member State. 	Absolute exception
4(1)(b)	The privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.	Absolute exception
4(2)	a) commercial interests of a natural or legal person, including intellectual property, b) court proceedings and legal advice, c) the purpose of inspections, investigations and audits	Relative exception – applies unless there is an overriding public interest in disclosure
4(3) 1 st subparagraph	<u>During the decision-making process:</u> The disclosure of the document would seriously undermine the institution's decision-making process.	Relative exception – applies unless there is an overriding public interest in disclosure
4(3) 2 nd subparagraph	<u>After the decision has been made:</u> Access to documents containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process.	Relative exception – applies unless there is an overriding public interest in disclosure

3. PRACTICAL GUIDANCE ON DRAFTING AND REGISTERING COMMISSION DOCUMENTS

As explained above, as a rule of thumb, all documents that, according to the applicable internal rules, are subject to registration in ARES (or any other equivalent system) are subject to the Regulation and may become public upon request (unless an exception applies).

For this reason, from a practical perspective it is important:

- ✓ To understand which Commission documents are subject to registration;
- ✓ When drafting documents that are subject to registration, **to keep in mind the fact that those documents could potentially become public**, with all attached legal, operational and reputational effects.

3.1. Commission documents subject to registration

3.1.1. *Registration criteria*

The Secretariat General has issued **dedicated [guidelines](#)** on the registration criteria applicable to documents drawn or received by the Commission. These guidelines introduce three questions, which should be asked whenever we draft or receive a document. **If the answer to all these questions is ‘yes’, then the document needs to be registered in ARES and/or any other equivalent corporate document management system.**

The questions are the following:

i. **Is the document related to the policies, activities or decisions falling within the institution's sphere of responsibility?**

ii. **Is the information contained in the document important and not short-lived?**

This question requires subtle judgement taking into account the content and context of the document concerned.

- A document that requires action or follow-up by the European Commission or one of its departments, or involves the responsibility of the institution, is important and not short-lived. Likewise, a document that may later be needed as proof in accordance with the rules and regulations applicable to the underlying ‘business process’ is considered important and not short-lived;
- In contrast, information is unimportant and short-lived if not keeping it would have no negative administrative or legal effect for the European Commission.

iii. **Is the document drawn up or received by the European Commission?**

- A document is considered ‘drawn up’ only if it is ‘stable’, i.e. if it has been approved as ready for transmission by the person who is empowered to take responsibility for its content in accordance with the rules and regulations applying to the underlying ‘business process’;
- This person does not have to be the person charged with the practical task of drafting or typing but rather the person or administrative entity responsible for the content in accordance with the procedural requirements and internal rules of the European Commission for the business process concerned;
- A document is considered as ‘received’ if it has been intentionally delivered to the European Commission by the (external) sender.

It follows from these three cumulative criteria **that various documents of a preliminary nature, such as e-mails containing iterations of a document (for instance, a draft**

legislative proposal, a draft policy communication or a draft impact assessment), exchanged between individual Commission staff members without constituting the position of the administrative entity or without being empowered to take responsibility for its content, or documents being prepared in collaborative spaces, should not necessarily be considered as having been drawn up or received by the European Commission.

Similarly, if the content of a draft text or an e-mail exchange between separate administrative entities within or between (a) Directorate(s)-General has been superseded or embodied by ensuing draft texts or e-mails forming part of the same exchange of views or consultations, there is no need for registration. For instance, in cases where, according to the applicable rules, agreement is to be obtained from a given entity, only the final consultation and the approval/final opinion of that entity requires registration.

The table illustrated in the **Annex** of this Note provides some practical examples on whether specific documents should or should not be registered in a document management system.

3.1.2. Consequences of wrongful application of registration criteria

In case we do not apply the registration criteria according to the set rules, we may have to deal with the following issues:

- A document which has been requested exists, but since it is not registered, we are not able to retrieve it, or we cannot retrieve it easily.
- More than one version of a document is available, and we are not in a position to identify which one is the final, endorsed version.

Correct application of the registration criteria is specifically important when we receive requests for access to documents, which are very broad in scope (e.g., “*any documents, including emails and meeting minutes that contain information on a specific topic*”). Such requests are common lately and often require significant time and coordination between different units or even Directorates General, to identify the documents falling within the scope of the request.

3.2. Drafting of Commission documents subject to registration

As already highlighted above, applicants can obtain access to and make public³ documents, which at the time of their drafting were not intended to be published (e.g. meeting minutes, briefings, email communication with externals, inter-service consultation, internal notes etc.).

Therefore, it is possible that we face situations where we would need to disclose a document, but this document has been drafted in a manner that we would not feel at ease to disclose in public, even though it does not fall (fully or partially) under the exceptions that would prevent disclosure. This would be the case if, for example, this document contains strong and subjective opinions, speculations not based on facts or inappropriate style (sarcasm, humorous expressions, personal remarks etc.).

To avoid this, it is important to deal with every document we draft and that is subject to the applicable registration rules described in the previous section **as a potentially public document and be mindful of the language used and the opinions expressed**. As further

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described in the Annex, such documents will usually include among others formal notes and communications, contributions to interservice consultations, minutes of meetings, especially with other institutions or external stakeholders, information received from/sent to the Member States or other EU institutions in accordance with the rules governing the underlying business process.

For any questions or comments, please contact the access to documents coordinator of DIGIT:

- [REDACTED]

[REDACTED]

ANNEX

Examples of items to be, or not to be registered (non-exhaustive)	
YES	NO
<ul style="list-style-type: none"> - Formal notes and communications, both received and sent, especially to/from external parties; - Financial documents (as per DG BUDG guidelines); - Minutes of meetings, especially with other institutions or external stakeholders, and, for important meetings held by Directors, Directors-General, Cabinet Members or Commissioners, briefings/speaking/defensive etc.; - Information received from/sent to the Member States or other EU institutions in accordance with the rules governing the underlying business process, or received from/sent to external stakeholders; - Contributions to interservice consultations; - Documents (including notes to the file and important, not short-lived e-mails) that attest situations or events, justify decisions made or otherwise explain important steps in the development of official actions; - Instruction notes and guidelines for services; - The final exchange between two or more administrative entities (whether within or between (a) Directorate(s)-General), reflecting the result of earlier, more preliminary exchanges, if that final exchange requires action or follow-up by the Commission or may later be needed as proof in accordance with the rules and regulations applicable to the underlying 'business process'. 	<ul style="list-style-type: none"> - Drafts (i.e. documents not yet validated by the person who is empowered to take responsibility for them in accordance with the underlying business process); - E-mails and other texts circulated within an informal, preliminary exchange of views between colleagues; - Exchanges on short-lived matters (such as exchanges regarding practical meeting arrangements); - Information on one's personal situation, unless it documents or implements the procedures established by the Staff Regulations; - Informal, preliminary exchanges of views between European Commission staff with a view to determining the position of the administrative entity responsible for the document's content; - Iterations of a preliminary document (e.g. a draft legislative proposal or policy communication or a draft impact assessment) or of e-mails, the content of which has been superseded and/or embodied by ensuing draft texts or e-mails forming part of the same exchange of views or consultations; - Early versions of documents being prepared in collaborative spaces, i.e. versions that do not reflect the final outcome or document of the collaborative work on the platform