



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate R. Management of resources
R.6. Document management and security

VADEMECUM

**on the procedure for treating
access to documents requests**

DG AGRICULTURE AND RURAL DEVELOPMENT

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1. INTRODUCTION

Applications for access to documents have grown in popularity as the general public is more aware of the obligation of transparency of the institutions following the entry into force of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents¹. An important and increasing number of enquiries, requesting huge volumes of complicated information, are submitted directly to all DGs and also via the SG, from citizens of all origins and backgrounds.

According to Regulation (EC) No 1049/2001, the EU institutions have the legal obligation to treat all requests and provide a reply. It is important to follow the correct procedure for handling these cases.

Regulation (EC) No 1049/2001 came into force on 3 December 2001. The key principles of the regulation are:

- It governs the requests for access to documents of natural persons or legal entities external to EU institutions.
- Access to documents shall be granted, unless a disclosure would undermine:
 - the public interest as regards public security, defence, international relations, financial, monetary, or economic policy of a Member State
 - an individual's privacy; commercial interests of natural or legal persons, court proceedings or legal advice; inspections, investigations and audit
 - the institution's decision making process²
- A document protected by an exception (other than public interest or the protection of private life) will only be disclosed if an overriding public interest demands it.

2. PROCEDURE FOR TREATMENT OF ACCESS TO DOCUMENTS REQUESTS IN DG AGRI

Unit R.6 access to documents sector coordinates and ensures the administrative management of all DG AGRI access to documents requests in conjunction with **unit I.1**, which provides legal advice in conformity with the requirement of the notes of the Secretary General.³ The main role of R.6 access to documents sector is to ensure the policy coherence with the Secretariat General, coordinate at DG level and with all other DGs and institutions to ensure that a consistent approach is applied, negotiate with the applicants and provide advice to colleagues.

¹ OJ L145, 31.5.2001, p. 43, annex I

² All the exceptions are mentioned in Article 4 of Reg. (EC) 1049/2001 and they may only apply for a maximum of 30 years.

³ Notes Ares (2011) 69210 of 21.01.2011 and Ares(2014)2354976 of 15.07.2014.

2.1 Arrival of the requests

Most requests are directed to the Secretariat General that then forwards them to the R.6 correspondents. It is possible that applicants address their requests to the AGRI ACCESS DOCUMENTS mailbox or directly to DG AGRI officials in specific units. All requests are treated equally. In the cases when the requests are received by DG AGRI units they should be transmitted to the access to documents sector of unit R.6, to the functional mailbox **AGRI ACCESS DOCUMENTS** for registration and further treatment.

A **request for information** (e.g. a question on a particular issue that does not involve disclosure of documents) should be treated by the responsible unit according to the **Code of Good Administrative Behaviour**⁴. For more information please consult the following links:

https://myintracomm.ec.europa.eu/hr_admin/en/code/Pages/conduct.aspx

Reminder on staff obligations when dealing with correspondence in compliance with the Code of good administrative behaviour - [Ares\(2014\)3295519](#)

2.2 Registration and treatment

Each request for unpublished documents is initially treated by the access to documents sector of unit R.6. After the initial administrative obligations have been fulfilled – including registration in Gestdem⁵ and sending the acknowledgement of receipt – the request is sent to the competent unit (responsible for the documents requested).

If the competent unit is unable to identify the document(s) requested, the colleagues are requested to **immediately** contact R.6 access to documents coordinators. The coordinators can ask the applicant to provide additional information that will enable the unit to identify the document(s) or to narrow down the request. In this case, the 15 working day deadline for the reply will apply only from the date on which this information is received. Even in cases when the request is already registered by SG, it may be possible to negotiate a longer deadline in the cases of complex and voluminous requests.

In case of a vague or voluminous request, the statutory deadline of 15 working days may be replaced by a timetable agreed upon with the applicant under Article 6(3) of Regulation (EC) No 1049/2001.

The competent unit has only a few days (normally 3-4 days in the cases of normal requests) to work on the request, as the signatory and the reply should be finalised within the total time limit of 15 days.

It is mandatory that the reply be sent to the applicant within 15 working days of receipt (registration date) of the request. This time frame may, in exceptional cases **ONLY**, be

⁴ Except if the request for information concerns the application of EU legislation by a Member State, in which case it should be treated under CHAP.

⁵ Gestdem is the database for registering all access to documents requests.

extended for another 15 days by the Access to documents coordinators according to Article 7(3) of Regulation (EC) No 1049/2001 – in the event of an application relating to a very long document, to a very large number of documents, or if there is a need for consultations with third parties, provided that the applicant is notified in advance in the language of the request and that the detailed reasons are given by the responsible unit. Active cooperation on the part of the responsible units is key for the timely handling of the request. In case where no contribution is received from the units within the internal deadline set by the coordinators, the respective hierarchy will be put in copy in the subsequent reminders.

As regards the treatment by the competent units, the responsibilities involve:

- *The competent unit needs to reply in writing to R.6 on whether it agrees or not to disclose the documents requested.*
- *The competent unit responsible for the file is in charge of: searching for; identifying; analysing; providing the documents; and the decision to grant or refuse access (see the table in Annex III).*
- *In case of doubt on the procedure and/or what can be disclosed, the colleagues in R.6 in charge of access to documents can be contacted to assist the unit in applying the Regulation and the internal procedure.*

2.3 Preparation of the initial replies

Before preparing the reply, the responsible unit shall *identify and draw up a complete list* (table in Annex III) of the documents related to the request and thoroughly examine the content of each document.⁶ According to the latest guidelines of the Secretariat General on document management and access to documents (Ares(2015)182108) regarding document registration rules, when processing a request for access, documents should be searched for in Ares or in another Commission document management system⁷. Then the thorough analysis aims to determine whether disclosure of the requested document would undermine any of the interests protected by Article 4 of Regulation (EC) No 1049/2001. Unit R.6 access to documents sector is available for advice and to liaise with SG if necessary for coordination and agreeing on coherent policy choices.

If the documents contain parts that *should not be disclosed* or *personal data (names, addresses, telephone numbers, etc) of persons*,⁸ the responsible unit has to redact them.

⁶ The only case where an exemption from preparing a complete list is possible is when access requests concern pending infringement files and EU Pilot procedures, state aid case and mergers. In that case it is not necessary to enumerate all documents contained in the file, as the general presumption of non-disclosure applies. The reply shall contain an explanation of the context of the pending procedure, the specific reference to the case file and enumerate the categories of documents contained in the file.

⁷ For requests covering older periods, it is advisable to check also for the availability of documents which should have been registered.

⁸ Apart from the names of external persons, both at the initial and at confirmatory stage, no access should, in principle, be granted to the names and functions of non-managerial Commission staff, unless a clear need thereto is established and there are no reasons to assume that the legitimate rights of the individuals concerned might be prejudiced. For detailed instructions, see [SG Access to Documents Corporate website](#), consult DG AGRI Access to Documents coordinators or the Data Protection Coordinators in unit R.6

The documents should be sent by e-mail to R.6 in the form that the responsible unit agrees for them to be disclosed.

Knowing that the main objective of Regulation (EC) No 1049/2001 is transparency, refusal of access to documents is only possible if at least one of the exceptions in Article 4 of Regulation (EC) No 1049/2001 applies, and if it is *properly motivated*.

In case of refusal, the responsible unit shall provide the Access to documents sector in R.6 with the arguments based on the exceptions laid down in Article 4 of the Regulation that justify the refusal by filling in the points in the standard template of the letter for negative replies (annex IV).

It is therefore important to know that simply mentioning an exception is not sufficient. The answer:

- *Shall not be stereotyped*
- *Must demonstrate that an assessment was conducted on a case-by-case basis.*
- *Its justification shall include the reasoning and grounds that link each exception to the documents refused.*

I.1 is always in visa for the final version of the reply, however to accelerate the procedure, legal questions should, when necessary, be submitted to I.1 beforehand.

For third-party documents, the access to documents sector has to consult the authors of the documents. Third-party documents may be disclosed without consultation if it is clear that disclosure will in no way affect the third party's interests or if the documents have already been made public. The only exception is when Member States are concerned: they shall always be consulted unless the documents are already lawfully in the public domain or the unit's firm decision is that they should not be disclosed based on the existing exceptions. For documents created by the Commission but based on information from Member States, the unit takes the decision and in case of positive reply, it is strongly recommended to inform the Member State for courtesy reasons.

R.6 will then prepare the signatory and send the reply to the applicant. The access to documents coordinators are also in charge of uploading all correspondence related to all requests in the Gestdem database and following up the strict deadlines.

2.4 Confirmatory applications

In case of a negative or partially negative reply, the applicant may, within 15 working days, make a confirmatory request to the Secretary-General. In such cases, unit R.6 access to documents sector provides the correspondence and the documents, together with the name of the contact person from the respective DG AGRI unit to SG. The competent unit of the DG that was responsible for the documents will cooperate with SG. AGRI ACCESS DOCUMENTS shall be always put in copy and kept informed.

In case the refusal is confirmed by SG, the applicant may submit an appeal to the Court of Justice of the European Union or/and a complaint to the Ombudsman.

2.5 Correspondence and signatures

2.5.1 Positive replies

The Access to document coordinators are responsible for preparing the standard replies and the signatories. The responsible unit and the legal unit (I.1) are always in VISA. The positive replies are signed by Director R of DG AGRI.

The access to documents database (Gestdem version 3.5) uploads automatically on the [Register of Commission Documents](#) all documents which are available in SG VISTA (database of the SG) and have already been disclosed via the access to documents procedure.

2.5.2 Negative or partially negative replies

The arguments for the negative or partially negative replies are provided by the competent unit in the negative or partially negative letter template. R.6 Access to documents coordinators prepare the signatories. The responsible unit and the legal unit (I.1) are always in VISA. The negative or partially negative replies are signed by the Director General of DG AGRI. In these cases the coordinators also send the reply with a registered mail and acknowledgement of receipt as per SG instructions in force since April 2014 (Ares(2014)801872 and Ares(2014)939888). If an initial reply is sent in English or French to meet the deadline (and the language of the applicant is different), the letter should state that the time limit for the confirmatory request begins to run from the date the applicant receives the letter in the language of his application.

This rule does not apply to cases when only the names of natural persons are redacted. Moreover, to simplify the procedure the Secretariat-General has authorised the services to apply the same level of signature as for positive replies in cases where the only parts of the documents to which access is refused are the names of the individuals contained therein, and the applicant has not explicitly expressed an interest in obtaining access to those names (Ares(2014)3950212 from 26.11.2014).

2.5.3 Devoid of purpose replies

Devoid of purpose are the replies to requests for which no corresponding document has been found. The signatories are prepared based on a template by R.6 and signed by the competent Head of Unit responsible for the subject matter (R.6 and I.1 in visa). In cases when the subject matter concerns more than one unit, the Heads of Unit are in visa and the reply is signed by Director R. The coordinators also send the reply with registered mail and acknowledgement of receipt as per SG instructions (Ares(2014)801872 and Ares(2014)939888).

2.5.4 Consultations with Member States

R.6 coordinators prepare the consultation letters addressed to Member States and R.6 Head of Unit signs them.

2.5.5 Consultations with third parties different from Member States (companies, non-governmental organisations, private persons, etc.)

Consultations with third parties different from Member States are done by e-mail by the access to documents coordinators.

2.5.6 Internal communication and coordination with other services

All internal communication with DG AGRI units and directorates, and the coordination with other related services (access to documents coordinators in other DGs, SG transparency unit), is performed by the Access to documents coordinators. If the request concerns documents that are in the Historical Archives (HAS), the responsible unit shall inform the Access to documents coordinators in R.6 to order via the CAD the documents from the HAS and R.6 will make them available to the responsible unit for analysis.

2.5.7 Relations with the Cabinet

The responsible units are requested to immediately inform the Access to documents coordinators if the applications concern documents originating from, or received by, the Cabinet. The contact with the Cabinet shall be done by the unit R.6 with copy to the Director R and the assistant of the DG.

In case a request concerns documents originating from the Cabinet or third party documents received by it, the decision is taken by the Cabinet.

2.5.8 Other

All remaining correspondence for clarifications with applicants, extension of deadlines, and requests not falling under Regulation (EC) No 1049/2001 are dealt with directly by the access to documents coordinators.

2.6 Additional points

2.6.1 Requests from Member States

According to the updated guidelines of SG access to documents requests introduced by national/public authorities are no longer redirected to the representations of the Members States, but treated directly by the responsible units.

Access to documents requests introduced by the National Authorities are normally processed within the framework of loyal cooperation⁹ stemming from Article 4 of the Treaty on European Union (TEU) and not under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents. In

⁹ http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/110125_en.htm

fact, the National Authorities may have more rights than a citizen to obtain documents not granted to the public. However, the possession of these documents does not equal publication and National Authorities cannot transfer them to third parties without consulting the Commission.

All such requests are sent via registered email in ARES together with the initial response of the Access to Documents sector (saying it will be treated directly by the competent unit) to the unit CF that has to reply to the national authority as soon as possible (at most within 15 working days). It is advisable that the responsible units send to the applicant also an acknowledgement of receipt (without mentioning the names of the coordinators, just the sector).

2.6.2 Requests from other institutions

Requests from other institutions (the European Parliament, the Council and the Commission) are dealt with under the Memorandum of Understanding between the services on the application of Article 4(4) of Regulation (EC) no 1049/2001. When they receive a request for access to a document in their possession drawn up or forwarded by another institution which has not yet been made public by this institution, the services of the institutions shall immediately inform the service concerned of that request and of their position as regards the release of the document before taking a decision. The service concerned shall react swiftly and, at the latest, within five working days.¹⁰

2.6.3. Requests for consultation for Commission documents

When a Member State or another third party that receives an application for access to a document originating from the Commission consults the respective services responsible for the document, it is the responsibility of the issuing unit to reply to the request indicating what the Commission's position would have been with regard to the provisions of Regulation (EC) no 1049/2001 if it had itself received the application. Unit R.6 access to documents coordinators are available for directions and advice. The unit shall reply directly according to the **Code of Good Administrative Behaviour**.

3. TYPES OF DOCUMENTS THAT CAN BE REQUESTED

- An unpublished document is any text (written on paper, stored in electronic form, or as a sound, visual or audio-visual recording) which is related to the Commission's areas of activity and is kept by it, but has not been made public. This covers both documents produced by the Commission, and those reviewed by it (*Articles 2 and 3 of the Regulation*).

¹⁰ Memorandum of understanding between the services of the European Parliament, the Council and the Commission on the application of Article 4(4) of Regulation (EC) 1049/2001 regarding public access to European Parliament, Council and Commission documents of 9 July 2002, not published.

- An **internal document** is a document that has either not been finalised, or is not intended for publication. Any internal Commission document can be requested, including **classified documents** (*Article 2 of the Regulation*).

For example:

- Preparatory documents on Commission decisions and policy initiatives such as preliminary drafts, interim reports, draft legislative proposals or decisions;
- Explanatory documents or other kinds of information such as statistics, memoranda or studies which form the background to Commission decisions and policy measures;
- Correspondence between the Commission and Member States, the public and companies.
- **Documents from third parties** received and kept by the Commission are also accessible. "Third party" means any natural or legal person, or any entity outside the institution concerned, including the Member States, other Community or non-Community institutions and bodies, and third countries (*Articles 2 and 3 of the Regulation*).

Databases

In the *Dufour v. ECB*¹¹ case, the General Court took the view that the data included in the database should be considered a document within the meaning of Regulation (EC) No 1049/2001. Moreover, any information that is not covered by an exception and that can be extracted from the database through a normal and routine operation can be the object of a request for public access.

4. DOCUMENT MANAGEMENT AND ACCESS TO DOCUMENTS

Please see annex 2: SG Note on document management and access to documents [Ares\(2015\)182108 - 16/01/2015](#)

5. LINKS

SG Corporate website on access to documents:

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

Access to documents on My AGRInet:

https://myintracomm.ec.europa.eu/dg/agri/coordination_communication/Pages/Accessdocuments.aspx

Europa Transparency Portal - access to documents:

¹¹ Judgment of the General Court of 26 October 2011 — *Dufour v ECB*, (Case T-436/09)

6. CONTACTS

Functional mailbox: XXXXXXXXXXXXXXXXXXXXXXXXXXXX@XX.XXXXXX.XX

Coordinators: [REDACTED] and [REDACTED] R.6

[REDACTED]

Legal advisor: [REDACTED] and [REDACTED] I.1

7. LIST OF ANNEXES

Annex I: Regulation (EC) No 1049/2001 - [link](#)

Annex II: SG Note on document management and access to documents
[Ares\(2015\)182108 - 16/01/2015](#)

Annex III: Table with list of identified documents

Annex IV: Standard letter of negative reply - [link](#)

Annex V: Small guide on access to documents



SOME USEFUL TIPS

to facilitate the management of
the access to documents requests

- Register and file correctly all important documents
- Manage well your files by including in them only relevant and essential documents
- Make public/publish all possible documents
- Draft carefully all your documents