



OUTLINE

- I. ADO in theory – Regulation (EC) No. 1049/2001 explained
- II. ADO in practice – Working arrangement within DG CLIMA (task division 001 // operational units)
- III. ADO in practice – Important case law

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I. ACCESS TO DOCUMENTS IN THEORY

REGULATION 1049/2001 EXPLAINED

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TRANSPARENCY POLICY – STARTING POINTS AND OBJECTIVES

Needs:

- Informing citizens about the way decisions are taken → better understanding of the EU institutions and decrease distrust towards the EU
- Holding the EU institutions accountable for their policies

= Increasing demand for transparency

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TRANSPARENCY AND PUBLIC PARTICIPATION – LEGAL BASES

In primary EU law:

TUE, Article 1: 'This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which *decisions are taken as openly as possible and as closely as possible to the citizen.*'

TFEU, Article 15(3): 'Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a **right of access to documents of the Union's institutions, bodies, offices and agencies, whatever their medium (...)**'

In secondary legislation:

Regulation (EC) No 1049/2001 on access to documents held by the Commission, the European Parliament and the Council ('ADO Regulation') [DOCUMENT]

Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies ('Aarhus Regulation') [INFORMATION]

See also:

Code of Good Administrative Behaviour

[INFORMATION]

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REGULATION 1049/2001 - SCOPE

- Beneficiaries:

'Any natural or legal person'

No obligation to motivate the request // no privileged access → Disclosure is *erga omnes*

NB: Member States are not beneficiaries to this Regulation (requests treated under the principle of sincere cooperation).

- Material Scope:

All existing documents drawn up or received in all areas of activity

Very broad definition of "document" : *'any content whatever its medium'*.

LIMITS:

1. Document ≠ Information (creation of new document not required)
2. Definition fine-tuned by case law.

- Time scope:

Any document less than 30 years old

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DISCLOSURE POLICY OF THE REGULATION

General Principle:

Granting the **widest possible access** to any document held by an EU-institution which is requested.

→ **Non-disclosure is the exception.**

Refusal ONLY if disclosure of the requested document(s) would (seriously) **undermine the protection of a specific interest** mentioned in Article 4 of the Regulation.

Strict interpretation of the exceptions (see. *T-105/95 WWF UK v Commission*)

'Sensitivity', 'Classified documents' : no exceptions.

Non-disclosure **ONLY** of the **protected parts**

EXCEPTIONS

- **Absolute exceptions (not balanced against the overriding public interest):**

- Art. 4(1)(a)** public security
defence and military matters,
international relations
financial, monetary or economic policy of EU/MS *[NB: not applicable to environmental information]*
- Art. 4(1)(b)** personal data

- **Soft exceptions (balanced against the overriding public interest):**

- Art. 4(2)** commercial interests (including IP)
court proceedings and legal advice
inspections, investigations and audits
- Art. 4(3)** decision making process [either when the decision has not yet been taken or after the adoption of the decision]

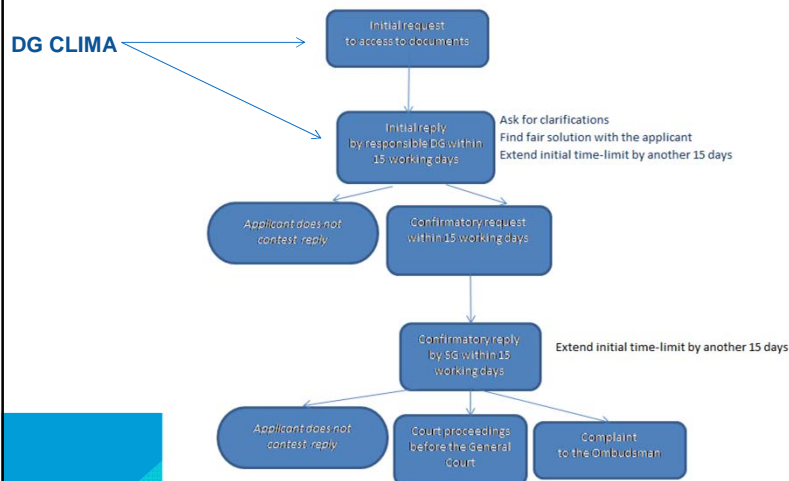
II. ACCESS TO DOCUMENTS IN PRACTICE

WORKING ARRANGEMENTS WITHIN CLIMA

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IN CLIMA - 3. IMPORTANT CASE LAW

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ADO IN PRACTICE - OVERVIEW



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WORKING ARRANGEMENT – CLIMA

1. Reception of an ADO request (You / 001 / SG)
2. Is this really an ADO request? (You / 001)
→ Contact 001
3. Registration in GestDem + Acknowledgement of receipt (001)
4. Units to identify the requested documents (You)
→ Importance of good document management
Registration in Ares of all long lived- / policy-related documents
5. Units give their opinion as to the disclosure of the identified documents
[001 can advise] (You + ast. 001)
6. If needed, consultation of 3rd party (001)
7. 001 to draft reply + answer to the applicant (001)

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ACCESS TO DOCUMENTS IN PRACTICE IMPORTANT CASE LAW

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IMPORTANT CASE LAW

Concrete examination of documents:

→ **No categories** of documents / **Content** only is to be assessed.

C-111/07, Agrofert Holding

Relationship Aarhus // ADO Regulations:

Assessment of the overriding public interest:

overriding public interest is deemed to exist when the environmental information =
emissions into the environment

'emissions which are real or actual and not merely potential' (e.g. direct or indirect release of substances from installations)

C-442/14, Bayer (Opinion of the advocate general, 07/04/2016 confirming case law)

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THANK YOU !

QUESTION?

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