



Environment DG

Access to Documents (ADO)

Regulation (EC) No 1049/2001

Introduction / general

Every person has the right to introduce requests for access to documents held by the Commission. As it is the rule that the unit responsible for the subject matter of the request answers to the request, each unit will from time to time have to answer to requests for access to documents held by the Commission.

Regulation (EC) No 1049/2001 applies to such requests, as well as the Commission Decision 2001/937/EC, ECSC, Euratom of 5 December 2001 amending its rules of procedure (notified under document number C(2001)3714).

As regards the interpretation and the application of the rules on access to documents, the Secretariat-General is file leader. In order to help staff dealing with requests for access to documents, the Secretariat-General has issued guidelines that are accessible on its internal website on access to documents.

These guidelines provide useful **questions & answers** on how to deal with requests for access to documents. In addition, a number of **standard letters** is available in different languages.

It goes without saying that the final arbiter on the interpretation of these rules are, however, the General Court and the Court of Justice.

In addition to this internal website that is only accessible for the staff, there is also the external Europa website, which provides access to a number of useful sites, such as the different registers of documents, not only from the Commission but also from other Institutions.

Members of the public have also the right to have **access to environmental information** held by Union institutions and bodies.

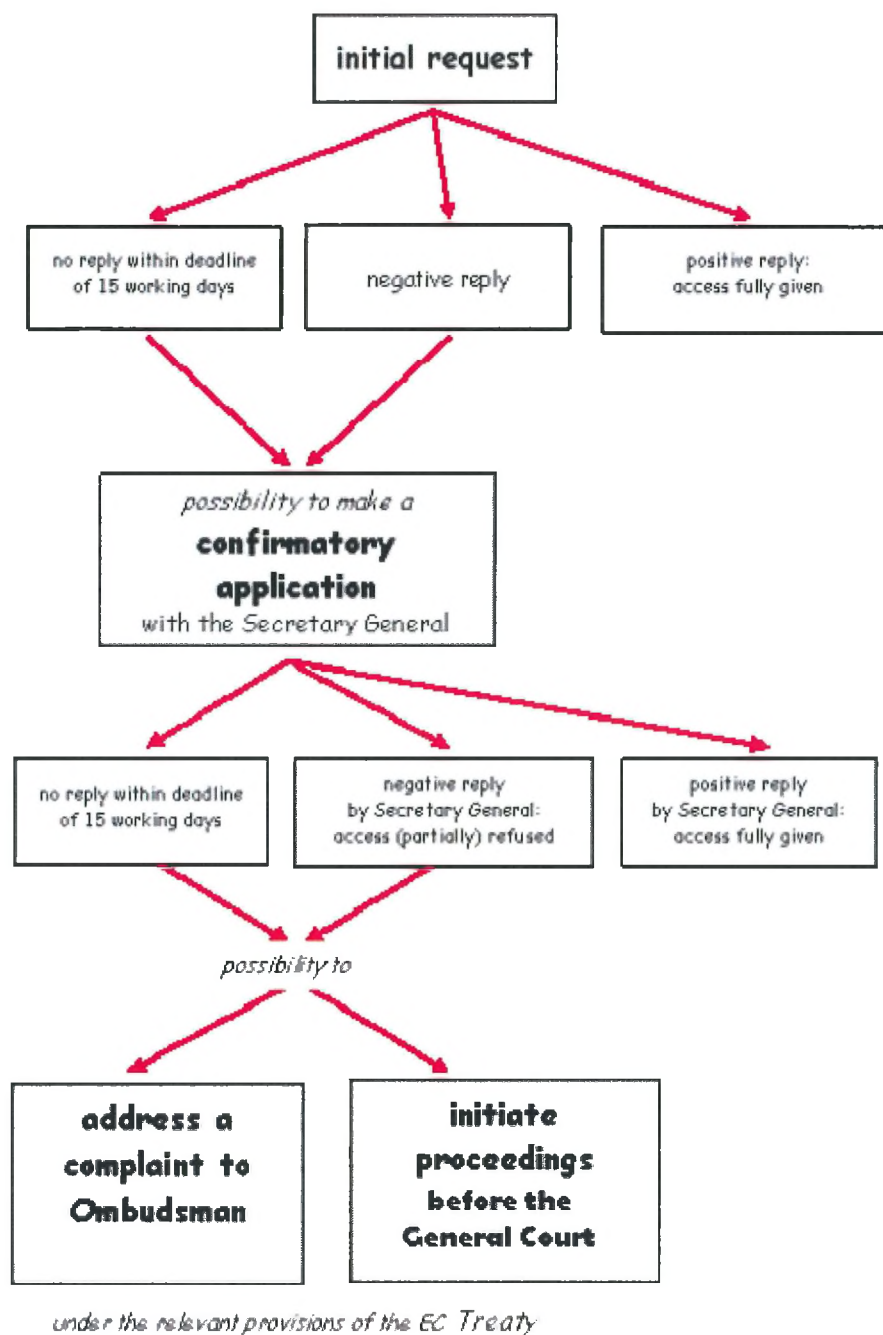
Environmental information covers any available information, in any form or format, on the environment itself, its elements (air, water, soil, land, landscape and natural sites, marine areas, etc.) and its various components, as well as information concerning factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases, affecting or likely to affect the environment. Environmental information also includes measures, such as policies, legislation, plans, programmes, and activities affecting or likely to affect the environment as well as measures or activities designed to protect it; cost-benefit and other economic analyses used to prepare those measures and activities are covered as well.

Information on the state of human health and safety, conditions of human life, cultural sites and built structures, when influencing or influenced by the environment, and reports on the implementation of environmental legislation also constitute environmental information.

Access to environmental information is governed by Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 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 ('the Aarhus Regulation').

The rules on access to environmental information are to a very large extent those governing access to documents, as the Aarhus Regulation provides that Regulation (EC) No 1049/2001 applies to any request for access to environmental information held by Community institutions. There are, however, some differences as far as exceptions are concerned.

The applicable procedure – which is then common to access to documents and access to environmental information – can be graphically summarised as follows:



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FORMAL HANDLING OF INITIAL REQUESTS FOR ACCESS TO DOCUMENTS

Treatment of initial requests for access to documents

Article 3 of Decision 2001/937/EC ECSC, Euratom provides that:

"(...), as soon as the application is registered, an acknowledgement of receipt shall be sent to the applicant, unless the answer can be sent by return post.

The acknowledgement of receipt and the answer shall be sent in writing, where appropriate, by electronic means.

The applicant shall be informed of the response to his application either by the Director-General or the head of department concerned, (...), or by a member of staff they have designated for this purpose.

Any answer which is even partly negative shall inform the applicant of his right to submit, within fifteen working days from receipt of the answer, a confirmatory application to the Secretary-General of the Commission (...)."

Reception and handling of an initial request for access to documents can be divided in the following steps:

(1) Reception of the request

Requests for access to documents arrive in a lot of different ways with the Commission. There are no specific requirements for submitting a request, except that it shall be in writing. Most requests are submitted through the internet application managed by the Secretariat-General, which dispatch them to the responsible Directorate-General. Requests may also be directly addressed to Directorates-General, directorates, units or individual Commission officials.

Depending on the contents of the documents requested, the request will be attributed to that DG/directorate/unit within which sphere of responsibility the contents fall.

(2) Registration of the request

Each request for access to documents has to be registered except when it concerns a document which has already been published (in which case it suffices to refer the applicant by return post to the website where the document is available or send him a paper copy thereof if it is not available in an electronic form).

In case the DG or unit receives a request for access to documents, it must register it in Ares. A copy of the request is to be sent to DG ENV Access to Documents Team ('ADO Team') - using the functional mailbox: ENV ACCESS DOCUMENTS -, which will then register it in the GESTDEM database set up by the SG with a view to ensure the shared management between the SG and ADO Teams of the various DGs of applications for access to documents. The ADO Team will inform the technical unit of the GESTDEM number, as this reference must be mentioned in the acknowledgement of receipt (if there is one – see sub-section (3) below), as and when the deadline is extended (see sub-section (4) below), and in any negative final answer to the applicant (see sub-section (5) below).

In case the SG receives the request, it will register it in the GESTDEM database and will pass it on to the DG responsible for the subject. Where DG ENV is concerned, the request is sent to the ADO Team, which will register it in Ares and pass it on to the competent unit (unless it can directly handle the request – see subsection (5) 1) below).

Reattribution of the request is always possible.

(3) Acknowledgement of receipt

In case a request for access to documents arrives via the internet application or through the SG, an acknowledgement of receipt to the applicant will be sent either automatically or by the SG.

In all other cases where the DG or unit receives a request for access to documents directly from the applicant, the technical unit that receives the request or to which the request is attributed shall send an acknowledgement of receipt to the applicant (a model letter is available on the SG website) unless the answer can be sent by return post.

Copy of the acknowledgement of receipt is to be sent to the functional mailbox: ENV ACCESS DOCUMENTS.

(4) Deadline for reply

An application for access to a document must be handled promptly and, within 15 working days from its registration, at the latest.

In exceptional cases, the deadline for reply can be extended with another 15 working days. The applicant has to be informed by the technical unit dealing with the request of this extension and of the reasons for it (a model letter is available on the SG website).

What is to be considered as an « *exceptional case* » is not defined. This may be, for instance:

- a very long document; this is a document of more than 200 pages (not likely in case the document can be sent electronically);

- a very large number of documents; these are 12 documents or more;
- documents which are spread in a large number (ten or more) of different files;
- where the author of the document has to be consulted.

In the event of an application relating to a very long document or to a very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution. Such a fair solution could be, if the applicant agrees, to answer to the application by "tranches" of documents with appropriate (successive) deadlines.

Copy of the letter/mail is to be sent to the functional mailbox: ENV ACCESS DOCUMENTS.

(5) Answer to the request

A request is answered either by giving or refusing access (in full or in part) to the document(s) requested. The procedure to be followed for preparing the answer differs according to whether the public character of the requested document is manifest or not.

(a) Documents whose public character is manifest

- 1) Where the requested document is manifestly public (for instance, a final COM document already adopted by the Commission), the technical unit may release it directly without prior consultation of the ADO Team.
- 2) It is always open to the technical unit to consult the ADO Team either because it has a doubt or simply because it wants to obtain reassurance that the document is public.
- 3) Where the request for documents is directly sent to the ADO Team, the latter will directly answer to the applicant if the requested document is available to the ADO Team. If not, the ADO Team will transfer the request to the technical unit concerned, informing it of the public character of the requested document.

(b) Documents whose public character is not manifest

- 1) Where the public character of the requested document is not manifest, the technical unit must consult the ADO Team using the functional mailbox "ENV ACCESS DOCUMENTS". As the technical unit knows best the content of the document and is therefore best

placed to appraise whether the release thereof could adversely affect the public interests the exceptions laid down in Article 4 of Regulation No 1049/2001 and Article 6 of Regulation (EC) No 1367/2006 purport to protect, that unit should indicate whether it considers that the requested document may be released or otherwise. On the basis of the preliminary assessment made by the technical unit, the ADO Team will consider whether the document may actually be released or otherwise in the light of the applicable rules. The ADO Team will do its utmost to reply to units within the shortest possible timeframe taking into account the complexity of each and every consultation.

2) Where the requested documents originate from third parties or Member States, the third party/Member State author thereof may have to be consulted pursuant to Article 4(4) or 4(5) of Regulation No 1049/2001. The technical unit will appraise in liaison with the ADO Team whether consultation is necessary in the specific case in issue. Once the documents in respect of which the third party/Member State author must be consulted have been identified, the technical unit will carry out the consultation. The ADO Team will provide the appropriate assistance to that effect.

3) Once the technical unit and the ADO Team have come to a common understanding as to which documents may be released (in full or in part) and which documents must not be disclosed (in full or in part) the technical unit will prepare the reply to the applicant. If need be, the ADO Team will provide the appropriate legal support with regard to the reasoning to be given in replies denying access.

4) Where the technical unit and the ADO Team have persistent diverging views on the public character of a document, the matter will be brought to the attention of the Directors concerned. If need be, and in the light of the specific circumstances of the case, the Directors may raise any pending issue with the Director-General or his/her Office. Alternatively or additionally, they may wish to consult the SG (and, where appropriate, the SJ).

5) Positive replies are to be signed by the Head of Unit.

6) Negative replies are to be signed by the Director General concerned. The ADO correspondent and the ADO Team must be mentioned on the routing slip of the signataire for visa.

7) Replies whereby access is granted to part of the requested document or some of the requested documents while it is denied for the remainder are also to be signed by the Director General concerned as

they constitute partial refusal to give access. The ADO Team must be mentioned on the routing slip of the signataire for visa.

8) Negative replies referred to under 6) and 7) above must always mention the right of the applicant to make a confirmatory application with the Secretary-General.

9) Model letters are available on SG website

10) Copy of all replies is to be sent to the functional mailbox: ENV ACCESS DOCUMENTS.



Environment DG

Access to Documents: Confirmatory Applications

Regulation (EC) No 1049/2001

Confirmatory applications for requests for access to documents held by the Commission

When, following an initial application for access to documents, access to documents is refused or in case no answer to the request is given, the applicant has the right to make a **confirmatory application** to the Secretary General of the Commission, asking the Commission to reconsider its position. Confirmatory applications must be made within 15 working days of receipt of the answer.

Confirmatory applications must be answered by the Secretary General. The reply is drafted by the Secretariat-General's unit responsible for access to documents.

However, before drafting the reply, the Secretariat-General asks the DG concerned to provide its opinion on the confirmatory application as well as the documents to which access was refused.

Within DG ENV, the technical unit that replied to the initial request is in charge of providing the DG's opinion, in close cooperation with the ADO Team. The technical units have to provide therefore the necessary input and copies of relevant documents to the SG, the ADO Team being in copy.

It is clear that the obligation to reply to the confirmatory application within 15 working days and the fact that the Secretariat-General has to obtain the agreement of the Legal Service prior to sending out the reply impose very short internal deadlines for the DG ENV (mostly only within 24-48 hours) for providing the requested opinion.

For more detailed information, see: Rules on handling of confirmatory applications.

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Environment DG

Access to Documents: Exceptions

Regulation (EC) No 1049/2001

Exceptions for requests for access to documents held by the Commission

The most critical or difficult phase in the treatment of applications for access to documents held by the Commission is to assess whether one or more of the exceptions provided for in Article 4 of Regulation No 1049/2001, as supplemented by Article 6 of Regulation 1367/2006 applying the Aarhus Convention to Community institutions and bodies, can be invoked as a ground for refusing access to the requested documents. As a rule, the greatest possible openness and transparency should be strived for. Recital 4 of Regulation No 1049/2001 states in this regard: "The purpose of this Regulation is to give the fullest possible effect to the right of public access to documents and to lay down the general principles and limits on such access in accordance with Article 255(2) of the EC Treaty." Recital 11 notes that, "[i]n principle, all documents of the institutions should be accessible to the public", although it also recognises that "(...) certain public and private interests should be protected by way of exceptions."

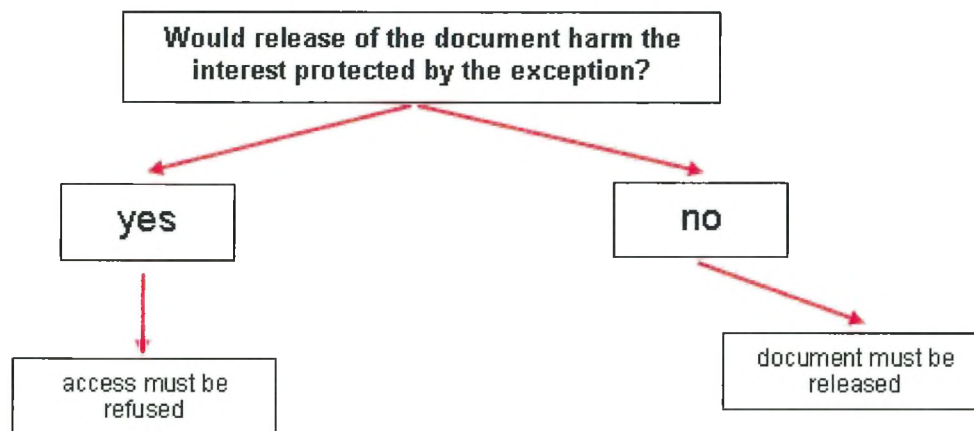
Where the document to which access is requested contains environmental information within the meaning of Regulation No 1367/2006 applying the Aarhus Convention to Community institutions and bodies, Article 4 of Regulation No 1049/2001 is supplemented by Article 6 of Regulation 1367/2006 which sets out specific rules concerning the application of exceptions concerning requests for access to environmental information, including the provision of one additional exception to those set out in Article 4 of Regulation No 1049/2001 ("Community institutions and bodies may refuse access to environmental information where disclosure of the information would adversely affect the protection of the environment to which the information relates, such as the breeding sites of rare species.")

It is within this context that the assessment for each individual request is to be made.

Article 4 of Regulation 1049/2001 sets out two categories of exceptions depending whether the release of a document is automatically refused when the disclosure would harm the protected interest or whether, even where such a harm would exist, disclosure may nevertheless be granted because of an overriding public interest in disclosure.

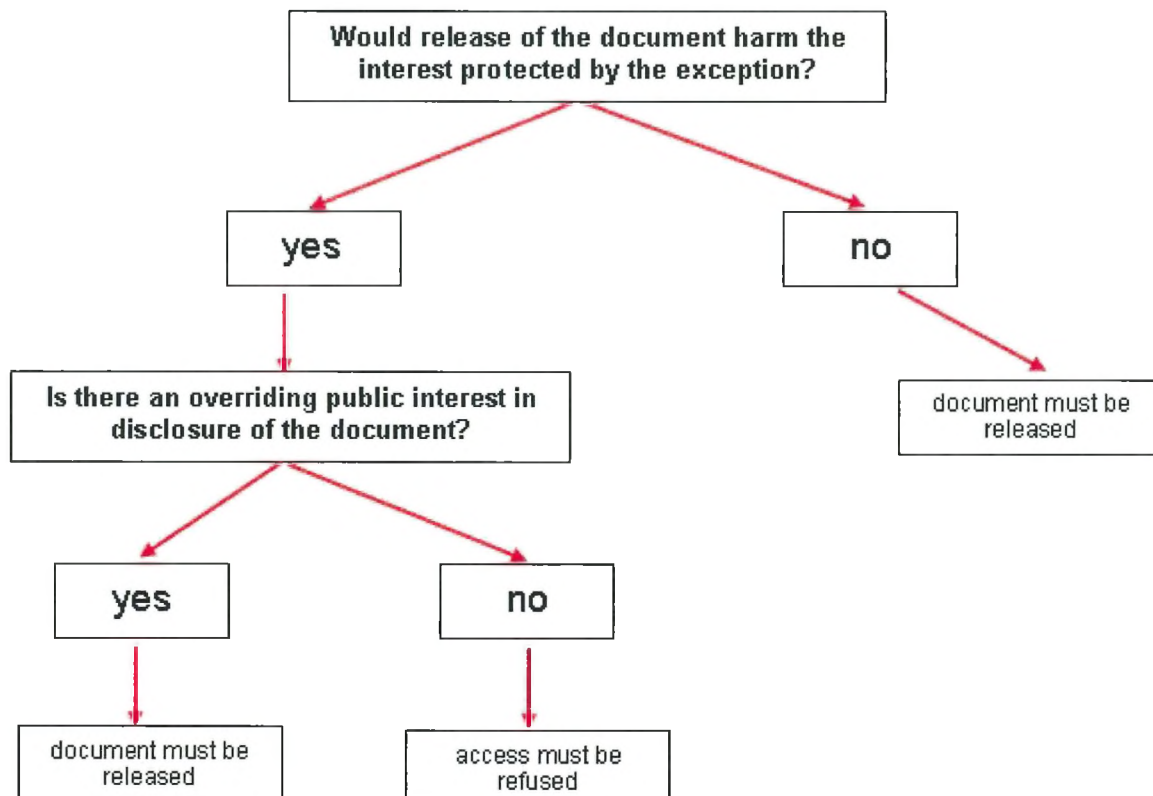
Article 4(1) of Regulation 1049/2001, provides that access to a document shall be refused where disclosure would undermine the protection of one of the interests listed in that article.

ASSESSMENT
APPLICATION OF ARTICLE 4(1)

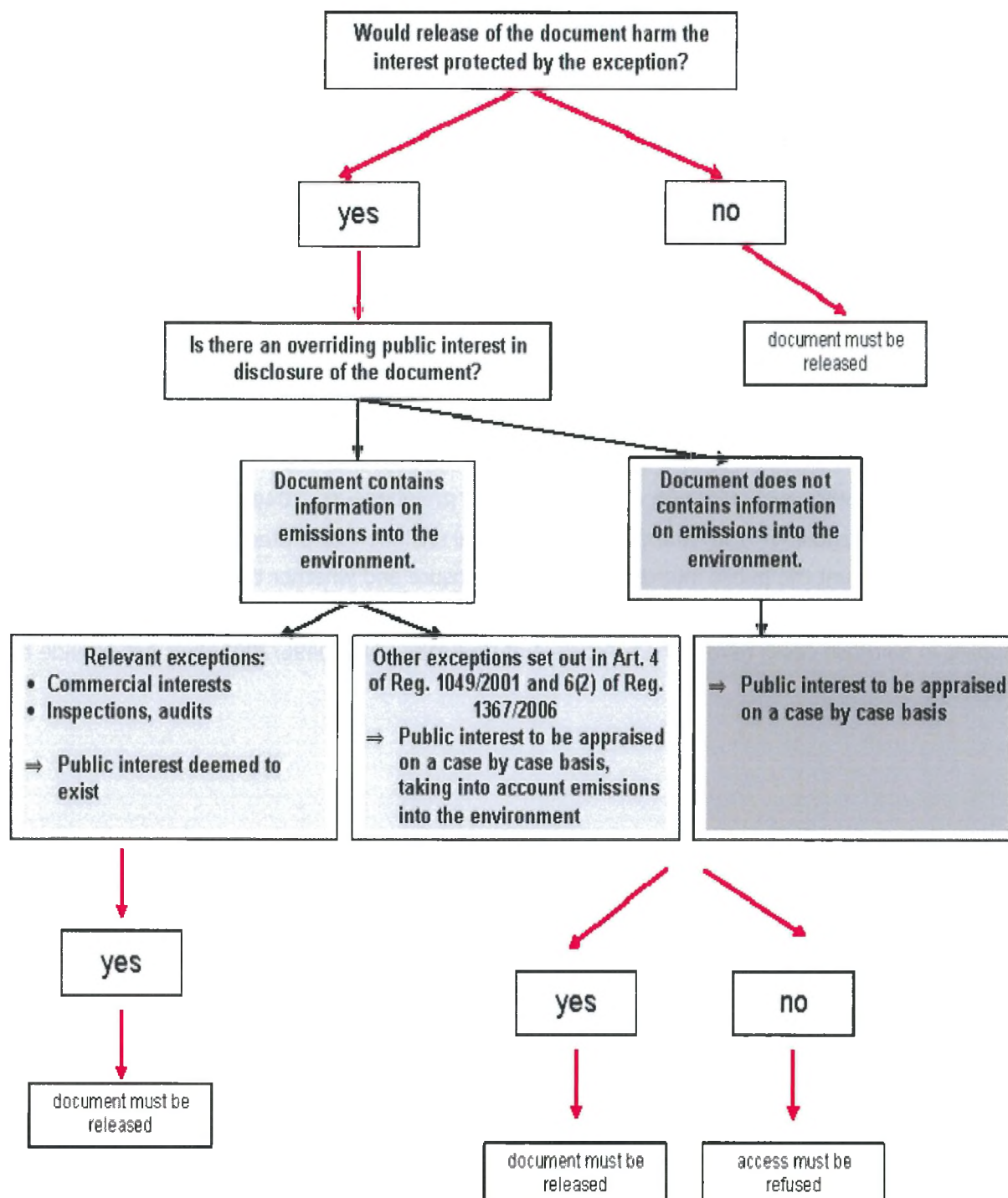


Article 4(2) and (3) of Regulation No 1049/2001 provides that access to a document shall be refused where disclosure would undermine the protection of one of the interests listed in these articles, unless there is an overriding public interest in disclosure.

ASSESSMENT
APPLICATION OF ARTICLES 4(2) AND 4(3)



ASSESSMENT
APPLICATION OF ARTICLE 4 OF REG. 1049/2001 AND 6(2) OF
REG. 1367/2006
ACCESS TO ENVIRONMENTAL INFORMATION



For further information or guidance on issues not dealt with under one of the above links, please contact the mailbox ENV-ACCESS-DOCUMENTS@ec.europa.eu.

The Secretariat-General, in its **guidelines for the staff**, available in EN and FR, has given some examples for the different exceptions.

In addition, the SG has provided guidelines on:

- **access to documents relating to infringement procedures**, available in EN, FR and DE and
- **access to documents concerning procurement and grant award procedures**, available in FR only.

Article 4 of Regulation No 1049/2001 as supplemented by Article 6 of the Aarhus Regulation applies to requests for access to documents that contain environmental information

In compliance with Article 6(1) of Regulation 1367, as regards the exceptions (set out in Article 4 (2), first and third indents, of Regulation No 1049/2001, with the exception of investigations, in particular those concerning possible infringements of Community law), an overriding public interest in disclosure shall be deemed to exist where the information requested relates to emissions into the environment. This means that access to information relating to emissions into the environment can never be refused in those cases.

As regards the other exceptions set out in Article 4 of Regulation No 1049/2001, according to Article 6(1) of Regulation 1367 the grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information requested relates to emissions into the environment. This means, inter alia, that a public interest applies in all those cases (even where Article 4 of Regulation No 1049/2001 does not provide for it).

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