

Fiche 4 Access to documents relating to inter-service consultations

Main issues:

- Documents relating to inter-service consultations ('ISCs') fall under the scope of Regulation 1049/2001. As any other document, they should be assessed under Regulation 1049/2001 in order to consider the possibility of granting full or partial disclosure.
- ISCs typically involve a significant number of DGs/services. Therefore, once a request for documents relating to ISCs is registered, it is important to identify the lead DG/service that will prepare the reply and/or coordinate the replies provided by other DGs/services.

Current administrative practice:

The status of ISC-related documents as Commission-internal documents does not as such justify the refusal of access. If their disclosure carries the serious risk of undermining an ongoing decision-making process within the Commission - typically when the Commission's proposal to which the ISC relates has not yet been adopted - access to ISC documents must be refused on the basis of the exception under Article 4(3), first subparagraph of Regulation 1049/2001 pertaining to the ongoing decision-making process (extending possibly throughout the inter-institutional decision-making process, as explained below).

Once the decision-making process is over, documents relating to ISC are in principle accessible. Access in such cases is granted, unless a specific exception of Article 4 of Regulation 1049/2001 applies.

The timing of the requested access is therefore important. However, it is not excluded that in some cases, disclosure of documents pertaining to an ISC would seriously undermine the decision-making process of the Union (and that of the Commission) even after finalisation of the ISC. These are, for instance, cases where the Commission's proposal to which the ISC relates was adopted, but the legislative process pertaining to the adoption of the act is still pending. If such a serious risk related to the public release of ISC documents to the inter-institutional decision-making process is identified and can be demonstrated, access must still be refused on the basis of Article 4(3), first subparagraph of Regulation 1049/2001. Once the legislative procedure (the inter-institutional decision-making process) is finalised and the act adopted, this exception can no longer be invoked.

Nevertheless, views and opinions for internal use as part of deliberations and preliminary consultations within the Commission can in some cases still be refused under Article 4(3), second subparagraph after finalisation of the specific decision-making process to which they pertain, but in that case a continued risk of serious harm to the Commission's decision-making process must be demonstrated.

Other specific exceptions under Article 4 of Regulation 1049/2001 can also apply. For example, the protection of international relations should be considered in cases where ISC relate to the negotiation of international agreements or concern the EU relations with third countries. Access to the whole document or to the relevant parts has to be refused, if there is a real and non-hypothetical risk of harm to the interest protected under the relevant exception.

The possibility of granting partial access (for example to information that might have already been publicly disseminated and is contained in the ISC documents) should always be considered, regardless of the timing of the requested access.

Case-law:

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Reference documents/links:

- Examples of confirmatory decisions and a summary of the relevant case-law are available on the Commission's access-to-documents webpages on *My Intracomm*¹;
- The full text of judgments of the EU Courts can be consulted on the website of the ECJ: www.curia.eu

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¹ <https://myintracomm.ec.europa.eu/sg/docinter/Pages/tools.aspx>.