

## Fiche 8 **Relationship between Access to documents and EP/COM Framework Agreement**

### Main issues:

- All documents in the Commission's possession - including documents from Member States – potentially fall within the scope of Regulation 1049/2001 and, as far as confidential information is concerned, under Annex II to the European Parliament/Commission Framework Agreement of 20 October 2010<sup>1</sup>. MEPs can either introduce a request for public access to documents under Regulation 1049/2001, or ask for access to confidential information via the relevant EP bodies<sup>2</sup> defined in Annex II to the EP/COM Framework Agreement.
- If the Commission receives an access-to-documents request under Regulation 1049/2001 covering Member State documents, and/or a relevant body of the EP requests confidential information under Annex II to the EP/COM Framework Agreement, the Commission must, in case of documents originating from Member States, consult the Member State(s) concerned to ascertain what confidential information might be transmitted.
- In case of Commission documents reflecting Member States' positions, it is also recommended to consult the respective Member States, unless it is clear that the document(s) shall or shall not be (fully or partially) disclosed.
- Where Member States consider that documents in possession of the Commission contain confidential information, this position has to be duly substantiated for assessment on a case-by-case basis by the Commission. For the purpose of applying Annex II to the EP/COM Framework Agreement, the confidential nature of information is determined in accordance with points 1.2.1. - 1.2.3. of the above-mentioned Annex II.
- As regards access-to-documents requests filed under Regulation 1049/2001, if the Member State author of the document(s) objects to the disclosure on the basis of the exceptions provided for in Article 4 of Regulation 1049/2001, the DG/service should not overrule the Member State at the initial level but confirm the refusal, as explained below.
- Access provided to the relevant EP bodies under Annex II to the EP/COM Framework Agreement **may not be more restrictive than public access** provided previously or simultaneously under Regulation 1049/2001.

### Current administrative practice:

*How to assess documents from third parties under Regulation 1049/2001 and under the EP/COM Framework Agreement?*

The services must ensure a coherent interpretation between the two legal instruments and consult the relevant Unit(s) in the service (typically, the access-to-documents coordinator and the unit in charge of relations with the European Parliament).

Concerning the administrative practice on the consultation of Member States, please consult the relevant fiche regarding the procedure to follow in case of third-party documents<sup>3</sup>.

The Commission's decision on what content of documents should be disclosed is taken on a case-by-case basis, depending on the sensitivity of the content and the possible harm in disclosure in light of the interests protected under Regulation 1049/2001, and taking into account the results of the third-party consultation (where applicable). In case of a Member State's opposition to disclosure, the Commission conducts a *prima facie* assessment of the reasons provided by the Member States. This applies both to requests under Regulation 1049/2001 and to those under the EP/COM Framework Agreement.

Under the EP/COM Framework Agreement, **further access can in some cases be considered** (for instance, through an *in camera* meeting of the relevant EP body *in camera*) **than the access that would be granted under Regulation**

<sup>1</sup> Framework Agreement on relations between the European Parliament and the Commission (OJ L 304/47 of 20.11.2010) - Annex II – Forwarding of confidential information to the European Parliament.

<sup>2</sup> The President of the EP, the chair(s) of the committees concerned, the Bureau or Conference of Presidents and/or the Head of the EP's delegation included in the Union delegation at an international conference.

<sup>3</sup> *link to Fiche on third-party documents.*

**1049/2001 on public access to documents.**

**Reference documents/links:**

- Fiche on consultation of third parties;
- Standard letters for consultation of third parties and Member States, as well as examples of confirmatory decisions and the summary of the case-law are available on the Commission's access-to-documents webpages on *My Intracomm*<sup>4</sup>;
- The full text of judgments of the EU Courts can be consulted on the website of the ECJ: [www.curia.eu](http://www.curia.eu)

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<sup>4</sup> <https://myintracomm.ec.europa.eu/sg/docinter/Pages/tools.aspx>;