

# EUROPEAN EXTERNAL ACTION SERVICE



Corporate Board Secretariat

Brussels, 13 May 2013  
EEAS (2013) 1141825

## **REPORT ON ACCESS TO DOCUMENTS FOR THE YEARS 2011 AND 2012**

### **A. Introduction**

Article 17.1 of Regulation (EC) n° 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents <sup>1</sup> (hereafter referred to as “the Regulation”) provides that *“Each institution shall publish annually a report for the preceding year including the number of cases in which the institution refused to grant access to documents, the reasons for such refusals and the number of sensitive documents not recorded in the register.”*

The entry into force of the Council Decision establishing the European External Action Service in July 2010 <sup>2</sup> and the subsequent creation of the new service under the authority of the High Representative on 1 January 2011 constituted a new administrative challenge as the newly created service had to build its own administrative structure, distinct from those of the European Commission and of the General Secretariat of the Council respectively.

This report is the first report on access to documents for the European External Action Service and it covers the two first years of existence of the EEAS, 2011 and 2012.

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<sup>1</sup> OJ L145, 31.5.2001, p. 43.

<sup>2</sup> Council Decision 2010/427/EU of 26<sup>th</sup> July 2010, OJ L201, 3.8.2010, p. 30.

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## **B. Regulatory, administrative and practical measures**

Pursuant to Art. 1 of the Council Decision establishing the European External Action Service<sup>3</sup> and in order to comply with the Regulation, the High Representative has taken on 19<sup>th</sup> July, 2011, a Decision on the EEAS rules regarding Access to documents. The Decision has been published in the Official Journal C243 dated 20/8/2011, p. 16.

This Decision does in particular provide for rules for processing initial and confirmatory applications, procedures for consultation concerning third party documents held by the EEAS, as well as requests for consultation received from other institutions or from Member States.

The task of Access to Document Co-ordinator was given to the Corporate Board Secretariat, which was staffed as appropriate.

## **C. Key developments**

The first tasks of the Access to Document Co-ordinator when appointed in May 2011 have been to:

- Create a first webpage for access to documents, with the view to facilitate access to the documents held by the EEAS;
- Set up a registry for requests for access to documents received by the EEAS;
- Deal with incoming requests.

The first webpage for access to documents held by the EEAS has been operational since the summer 2011. It can be reached under the “EU and citizens” tab on the EEAS index webpage. It includes a reference to the Regulation, as well as to the HR Decision regarding Access to documents.

The webpage gives access to a webform enabling the user to send a request for access to documents, as well as contact details by post or fax.

It is envisaged to set up a public register of documents for the EEAS: this public registry will allow access to documents webpage. The EEAS register has already been set up by a decision by the Chief Operating Officer (PROC EEAS(2011) 004 and the IT application to put it online is being developed .

A register for requests for access to documents received by the EEAS has been set up. It mainly aims at monitoring the follow up of the requests inside the EEAS and keeping track of the documents to which access has been given under a preceding request.

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<sup>3</sup> And in particular, its paragraphs 2 and 3, stating :

“2. The EEAS, which has its headquarters in Brussels, shall be a functionally autonomous body of the European Union, separate from the General Secretariat of the Council and from the Commission with the legal capacity necessary to perform its tasks and attain its objectives.

3. The EEAS shall be placed under the authority of the High Representative of the Union for Foreign Affairs and Security Policy (‘High Representative’).”

## D. Initial applications for access to documents

The EEAS has dealt with two main types of requests for access to documents in 2011/12.

- On the one hand it has provided advice to the Secretariat General of the European Commission for requests for access to documents addressed to the services of the European Commission using the application form for access to a document held by the Commission.
- On the other hand it has treated requests for access to documents held by the EEAS, received via its own access to documents webform and postal and fax addresses.

It should be noted that the statistics below reflect the number of applications and not of requested documents. In practice, applications may cover a single document or, in numerous cases, several documents, or even entire files concerning a specific issue.

The following table indicated the number of initial applications treated by the EEAS.

	<b>Requests sent to the Commission and assigned to the EEAS</b>	<b>Requests received directly by the EEAS</b>
Q1 - 2011	25	2
Q2 - 2011	78	10
Q3 - 2011	27	3
Q4 - 2011	30	6
<b>Total 2011</b>	<b>160</b>	<b>21</b>
	<b>181</b> of which 112 requests (61,87%) came from the academic sector	
Q1 - 2012	20	22
Q2 - 2012	35	29
Q3 - 2012	15	33
Q4 - 2012	36	19
<b>Total 2012</b>	<b>106</b>	<b>103</b>
	<b>209</b> of which 96 requests (45,93%) came from the academic sector	
<b>Grand Total</b>	<b>266</b>	<b>124</b>
	<b>389</b> of which 208 requests (53,47%) came from the academic sector	

A positive reply and full access to the documents requested was given to 71,72% of the initial applications (279 requests).

For 8 requests, additional information was asked from the requestor, yet no answer was received.

Finally, no documents matching the request were found in 0,77% of the cases (3 requests).

12,08% of the cases (47 requests) were subject to a full refusal and partial access was given to 6,43% of the initial applications (25 requests).

The grounds for, partial or total, refusal most frequently evoked were <sup>4</sup>:

- The protection of the public interest as regards public security (Art. 4.1.(a) first indent) for 4.17% of the cases (3 requests);
- The protection of the public interest as regards defence and military matters (Art. 4.1.(a) second indent) for 1,39% of the cases (1 request);
- The protection of the public interest as regards international relations (Art. 4.1.(a) third indent) for 87,50% of the cases (63 requests);
- The protection of privacy and the integrity of the individual (Art. 4.1.(b)) for 16,67% of the cases (12 requests);
- The institution's decision-making process where the decision has not yet been taken (Art. 4.3.) for 20,83% of the cases (15 requests).

It is to be noted that the EEAS has provided the services of the European Commission with the elements for replying to initial applications addressed to the Commission, but has not replied on its behalf for what concerns the totally or partially negative replies, thereby respecting the processing flow set up in the Regulation and giving maximum support to the Commission service concerned. However, in order to speed up the answering process, when the document requested could be made public, it was sent directly by the EEAS to the requestor.

## **E. Cooperation with other Institutions for access to documents**

The EEAS has been consulted regularly (64 times in 2012) by the transparency service of the General Secretariat of the Council, mainly on documents that were produced under the responsibility of services that were transferred from the General Secretariat of the Council to the EEAS when the EEAS has been set up.

There were also a few occurrences when the EEAS consulted the General Secretariat of the Council or specific DGs of the Commission, which had produced documents held by the EEAS.

## **F. Consultation of third parties**

Third parties were consulted for several requests for access to documents, in particular in two types of cases:

- Consultation of third States' administrations when the requests concern a jointly produced document, such as joint minutes of meetings or correspondence between the EEAS and a particular third State.
- Consultation of individuals whose personal data were subject to a request for access to documents. This consultation was made in the framework of Regulation 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>5</sup>. When the data subject did not agree to the release of his/her personal data, access to the document or part of the document requested was refused pursuant to art. 4.1.(b) of the Regulation.

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<sup>4</sup> The percentages given are that of the cases for which the document(s) was/were partially or totally refused, i.e. a total of 72 cases in 2011 and 2012.

<sup>5</sup> OJ L8, 12/1/2001, p. 1.

### **G. Confirmatory applications for access to documents**

The Chief Operating Officer of the EEAS has examined one confirmatory request in 2011 and no such request in 2012, for which he has confirmed the decision to refuse access to the documents concerned in virtue of Art. 4.2.(2) third indent, protection of the public interest as regards international relations.

### **H. Further recourse concerning access to documents requests**

There was no occurrence neither of a court proceeding nor of a complaint to the Ombudsman regarding the implementation of the Regulation against the EEAS in 2011 and 2012.

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