

EUROPEAN EXTERNAL ACTION SERVICE



Corporate Board Secretariat

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REPORT ON ACCESS TO DOCUMENTS FOR 2013

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 ¹ (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.*”

This report is the second report on access to documents for the European External Action Service and it covers the third year of existence of the EEAS.

B. Regulatory, administrative and practical measures

The legal and administrative basis for access to documents owned by the EEAS has been unchanged in 2013. It is the HR/VP's Decision on the EEAS rules regarding access to documents adopted on 19 July, 2011.

¹ OJ L145, 31.5.2001, p. 43.

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C. Key developments

- The Access to Document co-ordinator has successfully made contacts with almost all EEAS divisions (geographical, thematic and support), hence building a network enabling a smooth and positive collaboration with our services in the framework of EEAS transparency duties.
- Parallel to this, the EEAS reached an agreement in June 2013 with the European Commission on the treatment of requests for access to documents held by both administrations, whereby all requests on external relations matters received by the Commission shall be handled single-handedly by the EEAS. When receiving a request concerning its former DG RELEX activities, the Commission will reply to the requestor that the request has to be sent again to the EEAS.
- Contacts have also been pursued with Council counterparts so as to set up a joint awareness raising campaign and ensure good cooperation between the Council and EEAS services.

D. Initial applications for access to documents

The EEAS has dealt with two main types of requests for access to documents in 2013.

- On the one hand (and until June 2013), 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 or fax addresses.

It should be noted that the statistics below reflect the number of applications and not the number of requested documents in each application. In practice, most applications cover several documents, or even entire files concerning a specific issue.

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

	Requests sent to the Commission and assigned to the EEAS	Requests received directly by the EEAS
Q1	45	31
Q2	8	42
Q3	0	47
Q4	0	44
Total 2013	53	164
	217 of which 88 requests (40,55%) came from the academic sector	

A positive reply and full access to the documents requested was given to 64,97% of the initial applications (141 requests).

Partial access was given to 17,05% of the initial applications (37 requests).

12,90% of the cases (28 requests) were subject to a full refusal .

For 11 requests, additional information was asked from the requestor so as to better understand what the s/he was looking for, yet no answer was received.

The grounds for, partial or total, refusal most frequently evoked were ²:

- The protection of the public interest as regards international relations (Art. 4.1.(a) third indent) for 83,67% of the cases (41 requests);
- The protection of privacy and the integrity of the individual (Art. 4.1.(b)) for 18,36% of the cases (9 requests);
- The protection of the public interest as regards public security (Art. 4.1.(a) first indent) for 6,12% of the cases (3 requests);
- The protection of the public interest as regards the financial, monetary or economic policy of the Community or a Member State (Art. 4.1.(a) forth indent) for 4,08% of the cases (2 requests);
- The protection of the commercial interests of a natural or legal person, including intellectual property (Art. 4.2.) for 4,08% of the cases (2 requests).
- The protection of the public interest as regards defence and military matters (Art. 4.1.(a) second indent) for 2,04% of the cases (1 request);
- The institution's decision-making process where the decision has not yet been taken (Art. 4.3.) for 28,57% of the cases (14 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 4 times by the transparency service of the Secretariat General of the European Commission and 1 time by the transparency service of the Secretariat General of the European Parliament. The EEAS has been consulted regularly (69 times in 2013) by the transparency service of the General Secretariat of the Council, mainly on documents that were produced under the responsibility of services that were

² 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.

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 concerned 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 data³. 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.

G. Confirmatory applications for access to documents

The Chief Operating Officer of the EEAS has examined nine confirmatory requests in 2013,

- The refusal to grant access to the documents requested has been confirmed in two cases;
- An oral interview has been proposed in one case with the view to contribute to the research work of the requestor without actually disclosing documents;
- An extended partial access has been given to the requested documents in five cases; and
- Full access has been given to the two documents requested in the last of these cases.

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.

³ OJ L8, 12/1/2001, p. 1.