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No 1049/2001 of the European Parliament and of the Council of 30 May 2001  
regarding public access to European Parliament, Council and Commission  
documents

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Delegations will find attached the above-mentioned draft report, as it stands after examination by the Working Party on Information at its meeting on 30 March 2007.

The Permanent Representatives Committee is accordingly asked to suggest that the Council, at its next meeting, record its agreement to the report set out below.



**DRAFT**

**FIFTH ANNUAL REPORT OF THE COUNCIL ON THE IMPLEMENTATION  
OF REGULATION No 1049/2001 OF THE EUROPEAN PARLIAMENT AND OF  
THE COUNCIL OF 30 MAY 2001 REGARDING PUBLIC ACCESS TO  
EUROPEAN PARLIAMENT, COUNCIL AND COMMISSION  
DOCUMENTS**



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## INTRODUCTION

Article 17(1) of Regulation No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents 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*"<sup>1</sup>.

This report covers the Council's implementation of Regulation No 1049/2001 in 2006.

As in the earlier annual reports<sup>2</sup>, Part I of this report sets out the regulatory, administrative and practical adaptations made by the Council in 2006 in order to ensure compliance with the provisions of Regulation No 1049/2001. Part II analyses the figures for applications for access during the reference period. Part III relates more specifically to the Council's application of exceptions to the right of access under Article 4 of Regulation No 1049/2001. Part IV lists the key events of the fifth year of implementation of the Regulation, and Part V deals with complaints made to the European Ombudsman and with legal actions. A final section, Part VI, presents the report's conclusions.

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<sup>1</sup> See earlier reports by the Council (7957/03, 8036/04, 8896/05 and 13354/1/06 REV 1) and the Commission (COM(2003) 216 final, COM(2004) 347 final and COM(2005) 348 final). For the European Parliament's reports on the years 2002-2005, see the Notes from the Secretary-General of the European Parliament to the Bureau dated 23 January 2003 (PE 324.992/BUR), 19 February 2004 (PE 338.930/BUR/NT), 7 March 2005 (PE 352.676/BUR./ANN.) and 22 March 2006 (PE 371.089/BUR./ANN.). Moreover, in accordance with Article 17(2) of Regulation No 1049/2001, the Commission published a report on the implementation of the principles of the Regulation on 30 January 2004 (COM(2004) 45 final).

<sup>2</sup> See 7957/03, 8036/04, 8896/05 and 13354/1/06 REV 1

## I. REGULATORY, ADMINISTRATIVE AND PRACTICAL ADAPTATIONS

### 1. *Public register of Council documents*

Under Article 11 of Regulation No 1049/2001, the Community institutions are required to make a document register available in electronic form. The public register of Council documents, which has been operational since 1 January 1999, contains references to the Council documents entered in it via an automatic archiving system. Accordingly, all non-sensitive documents submitted to the Council or to one of its preparatory bodies which are to serve as a basis for deliberations, could influence the decision-making process or reflect the progress made on a given subject are automatically listed in the register. In the case of sensitive documents<sup>3</sup>, the author specifies the references which may be permitted to appear in the register<sup>4</sup>.

The register allows access to the full text of a large number of documents which, pursuant to Article 11 of Annex II to the Council's Rules of Procedure, must be made directly available to the public as soon as they have been circulated<sup>5</sup>. These are documents in the following categories:

- provisional agendas for Council meetings and for its preparatory bodies (with the exception of certain bodies dealing with military and security questions);
- documents submitted to the Council which are listed under an item on its agenda marked with the words "*public deliberation*" or "*public debate*" in accordance with Article 8 of the Rules of Procedure<sup>6</sup>;
- in the legislative field, "I/A" and "A" item notes submitted to Coreper and/or the Council, as well as draft legislative acts, draft common positions and joint texts approved by the Conciliation Committee to which they refer;
- documents regarding a legislative act after a common position has been adopted, a joint text has been approved by the Conciliation Committee or a legislative act has been finally adopted;
- any other text adopted by the Council which is intended for publication in the Official Journal;

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<sup>3</sup> For the purposes of Regulation (EC) No 1049/2001, "sensitive documents" means documents classified as "CONFIDENTIEL", "SECRET" or "TRÈS SECRET/TOP SECRET". On this subject, see Article 9(1) of that Regulation.

<sup>4</sup> See Article 9(2) and Article 11(2) of Regulation No 1049/2001.

<sup>5</sup> In 2006, 102.087 documents were made available to the public via the register as soon as they had been circulated.

<sup>6</sup> See Article 11 (5) (b) of Annex II to the Council's Rules of Procedure, JO L 285, 16.10.2007, pp. 62 - 64. For additional information on this issue, see also chapter IV (1) of the present report, pp. 15-16.



- documents originating from a third party which have been made public by the author or with his agreement;
- documents which have been made available in full to a member of the public who made an application.

As of 31 December 2006, the register listed 849 117 documents (all languages taken together), of which 583 905 (68,7 % of those registered) were public, i.e. either available in downloadable format (563 089 documents in PDF or HTML format) or on request (20 816 documents in other formats). This represented an increase of 22,8 % in the number of documents referred to in the register (691 410 at the end of December 2005 against 849 117 at the end of 2006) and an increase of 38,3% in the number of documents directly accessible via the register (422 297 in early January 2006 against 583 905 at the end of the year).

Moreover, as of 31 December 2006 the register contained 14 763 documents bearing the code "P/A" (i.e. partially accessible), including 2 133 which were accessible on-line (in PDF format)<sup>7</sup>. "P/A" documents registered before 1 February 2004 (from when all new documents classified as partially accessible have been directly available to the public via the register) are not usually downloadable but may be made available on request.

In 2006, 380 349 different users logged on to the Council's public document register (as against 259 106 in 2005), representing a 46,8 % increase in the number of users in one year. The total number of visits increased by 61,8 % (1 722 354 visits in 2006 against 1 064 039 in 2005), representing more than 4 780 visits per day. Consultations (in terms of number of screens viewed) totalled 7 818 759.

409 (original language) sensitive documents were produced in the period concerned, 32 classified as "SECRET UE" and 377 as "CONFIDENTIEL UE". Of these, one "SECRET UE" document and 78 "CONFIDENTIEL UE" documents are mentioned in the register, in accordance with Article 9(2) and Article 11(2) of Regulation No 1049/2001.

## 2. *Practical adaptations*

Under Regulation (EC) No 1049/2001, all applications for access to documents held by the Council concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility must be given consideration, including applications relating to classified documents.

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<sup>7</sup> Partial disclosure is practised in conformity with Article 4(6) of the Regulation.

The processing of applications for access to classified documents requires thorough investigation by the relevant departments of the General Secretariat of the Council. In 2006 the Transparency Department examined a total of 949 classified documents (against 593 classified documents in 2005) including 45 classified as "CONFIDENTIEL UE" and 904 classified as "RESTREINT UE"<sup>8</sup>.

In order to conduct their examination, Transparency Department officials systematically consult the authors/departments concerned. Despite the often highly complex nature of the dossiers which have to be examined, the General Secretariat of the Council has been able to cope with the increasing associated administrative burden and to comply with the conditions and time-limits laid down by Regulation No 1049/2001.

It should be noted in this connection that the time-limit for replying is 15 working days, with a possible extension of a further 15 working days in duly justified cases, e.g. where the application concerns a very large number of documents.

In 2006 the average time for processing initial applications was 14 working days. The Council Secretariat extended the time-limit in 18,6% of initial applications but it is forced to use this option more frequently for confirmatory applications, which have to be examined by the Working Party on Information before being submitted to Coreper and the Council for adoption, each of these steps requiring some time.

As provided for in Article 4(6) of Regulation No 1049/2001, the Council routinely considers disclosing parts of requested documents. This makes for greater openness, particularly in the legislative field.

Where a document is still subject to discussions within the Council or its preparatory bodies, and this document reflects the positions of delegations, the situation may arise that full release of the document can interfere with the proper conduct of the negotiations. In such cases, the Council applies, as a general rule, Article 4(3) of the Regulation by granting access to the content of the preparatory documents while these are still being discussed, removing only the references to names of delegations. Interested parties can thus follow the progress of discussions without the institution's decision-making process being undermined. This practice does not, however, prejudice the possible application of other exceptions provided for in Article 4 of the Regulation.

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<sup>8</sup> The documents in question concerned notably the areas of Justice and Home Affairs (40,6%), CFSP (21,2%) and enlargement (34,9%).

3. *In-house instructions, training sessions, staff*

As in previous years, in 2006 the Council Secretariat ran a series of training sessions<sup>9</sup> for Council staff responsible for document production in order to familiarise them with the procedures and practice to be followed as regards public access to documents.

In 2006, the "Transparency, access to documents and information to the public" Unit of the General Secretariat of the Council (DG F) had a staff of 16, allocated as follows:

Access to documents:	2 AD and 8 AST
Information to the public:	6 AST.

The staff of the "Information to the public" section handles the requests for information from members of the public under the Code of good administrative behaviour for the General Secretariat of the Council<sup>10</sup>. In 2006, the service received a total of 17 712 communications from the public (including 11 070 petitions) and dealt with 4 811 requests for information, of which 3913 were forwarded by e-mail and 898 were sent by letter<sup>11</sup>.

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<sup>9</sup> In all, four training sessions (one per quarter) were organised during the reference period; in addition specific briefing meetings were held between Transparency Department staff, members of the GSC's various departments concerned and members of the Council's preparatory bodies.

<sup>10</sup> Decision of the Secretary-General of the Council/High Representative for Common Foreign and Security Policy of 25 June 2001 on a code of good administrative behaviour for the General Secretariat of the Council of the European Union and its staff in their professional relations with the public, OJ C 189, 5.7.2001, p. 1.

<sup>11</sup> In 2005, the figure was 13 147 communications (11 785 sent by e-mail and 1 362 by letter).

## **II. ANALYSIS OF APPLICATIONS FOR ACCESS**

In the initial stage, applications from members of the public for access to Council documents are handled by the General Secretariat of the Council. In the event of total or partial refusal by the Council Secretariat, the applicant may make a confirmatory application asking the Council to reconsider its position. If the confirmatory application is totally or partially refused, the applicant may lodge a complaint with the European Ombudsman or institute proceedings before the Court of First Instance of the European Communities.

The Annex to this report provides statistics on public access to Council documents for the first five full years following entry into force of Regulation No 1049/2001.

During the reference period the Council received 2 224 requests from the public for access to a total of 11 353 documents. The number of documents disclosed in full or in part (following initial or confirmatory applications) totalled 9 606 in 2006.

As the statistics for Internet consultation of the public register of Council documents demonstrate, the Internet register continues to be an important research tool for citizens wishing to keep close track of the activities of the European Union. This is borne out by the almost 61,8% increase in the number of visits (a number which has risen for four years in succession).

### **Occupations and geographical distribution of applicants**

Initial applications came mainly from students and researchers (34,5 %). Lawyers (9,1 %), industry and commerce and pressure groups (17,6 %) were also high on the list of social and professional categories represented. Since applicants are not required to give their identity or provide reasons for their applications, which are usually sent by e-mail, the occupations of a significant proportion (13,6 %) of them is unknown. Most confirmatory applications also originated from students and researchers (54,3 %).

Journalists accounted for only 5,7 % of applicants at the confirmatory stage, mainly because for journalists the institutions' public document registers represent only one of several possible sources of information. Moreover, the vast majority of journalists are mainly interested in the latest news. It is therefore not surprising that the few applications for access from journalists came in the main from the field of investigative journalism and were hence similar to applications from academics.

As regards the geographical distribution of applicants, the majority of initial applications came from Belgium (26,1 %), Germany (15,4 %), France (8,1%) and the United Kingdom (7,8 %). Applications originating from non-EU countries represented 8,5 % of the total. Confirmatory applications came mainly from the following five countries: the United Kingdom (22,9 %), Germany (22,8 %), Belgium (17,1 %), Italy (8,6 %) and the Netherlands (8,6 %) <sup>12</sup>.

The relatively high number of initial and confirmatory applications originating from Belgium is explained by the fact that several multinational companies and international law firms, as well as numerous associations representing various economic and industrial sectors at European level have their headquarters in Brussels.

### **Fields covered by applications**

As regards the fields covered by the applications, the interest in Justice and Home Affairs remained high (24,5 %) <sup>13</sup>. This was followed, in descending order, by applications for documents on external relations and CFSP (14,3 %), the environment (6,6 %), agriculture and fisheries (5,9 %) and competitiveness (5,8 %).

Applicants' interest in Justice and Home Affairs (24,5% of applications in 2006 as against 22,5% in 2005) the CFSP (14,3% in 2006, 12,8% in 2005) and competitiveness (5,8% in 2006, 5,3% in 2005) remained fairly steady, whereas internal-market-related applications went further down to 4,6% (as against 6,2 % in 2005, and 14,2% in 2004) <sup>14</sup>.

### **Number of documents examined and refusals of access**

During the reference period, the General Secretariat examined 11 353 documents, 9 606 of which were made available in the initial stage (reply supplied by the General Secretariat on behalf of the Council). 40 confirmatory applications were made in respect of 142 documents, as a result of which the Council decided to disclose an additional 99 documents (46 in full and 53 in part).

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<sup>12</sup> In 2005, most confirmatory applications came from Belgium (28,1 %), the United Kingdom (18,8 %) and Germany (12,5 %).

<sup>13</sup> This figure is slightly up on the previous year (22,5%) In 1999 justice and home affairs accounted for 37 % of applications for access, a percentage which fell to 29 % in 2000, 29,5 % in 2001, 24,4 % in 2002, 22 % in 2003, and 20,4% in 2004.

<sup>14</sup> Of the documents disclosed in full following application for access, 24,3 % related to justice and home affairs, 11,5 % to the CFSP, 7,4 % to the internal market and 6,8 % to social policy. Of the total number of documents disclosed (in full or in part), 28,2 % concerned justice and home affairs 12,7 % CFSP, 6,9 % the internal market and 6,4 % social policy.

Thus, of the 11 353 documents requested during the reference period, access to 1 648 was refused (initial and confirmatory phases taken together), giving an access percentage of 76,8 % (documents requested and disclosed in full) or 87,7 % if documents approved for partial access are taken into account.

While the rate of access to Council documents thus increased from 81,2% in 2005 to 87,7% in 2006, these figures must not only be viewed in conjunction with the rise in the number of documents requested (up 20% on the previous year), but also in the light of the significant numbers of documents (102 087 in 2006 compared with 77 832 in 2005) which were made directly available via the register as soon as they had been circulated.

### III. APPLICATION OF EXCEPTIONS TO THE RIGHT OF ACCESS

#### Grounds for refusal

With initial applications, the grounds for refusal most frequently invoked were the protection of the decision-making process, which accounted for nearly half of all refusals (43,2 %), followed by the protection of the public interest as regards public security (17,1 %), international relations (12,3 %) and defence and military matters (4,5 %). In 20,2 % of cases several grounds for refusal were invoked: thus protection of the decision-making process was often given in conjunction with protection of the public interest as regards international relations (8,7%) or public security (2,8 %). Similarly, in a number of cases, the protection of the public interest as regards public security was associated with the protection of the public interest as regards international relations (3,6 %)

With regard to confirmatory applications, protection of the public interest as regards public security was invoked as grounds for 37,2% of refusals in 2006 (49,6 % in 2005). In 2006 protection of the public interest as regards international relations was invoked in 14 % of cases (20,3 % in 2005), and protection of the public interest as regards defence and military matters in 16,3 % of cases (5,7 % in 2005). As regards the protection of the decision-making process, this reason for refusal was used in 7% of cases (11,4% in 2005). Finally, in 20,9 % of cases, several different reasons for refusals were given: in a number of cases, the protection of the public interest as regards international relations was associated with other grounds for refusal, such as protection of public security (7,5 %) or protection of the decision-making process (5%).

#### Specific exception for legal advice

The protection of court proceedings and legal advice (exception provided for in the second indent of Article 4(2) of Regulation No 1049/2001) was invoked as grounds in the initial phase in a mere 2 % of refusals in 2006 (1,8 % in 2005) and in 4,6% of refusals at the confirmatory stage.

While this exception is not the Council's most frequently invoked grounds for refusal, its importance for the proper functioning and effectiveness of the institution's work should nevertheless be stressed <sup>15</sup>.

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<sup>15</sup> The practice is as far as possible to grant partial access, in accordance with Article 4(6) of Regulation (EC) No 1049/2001, to documents containing Council Legal Service opinions and contributions by the Legal Service to the proceedings of the Council and its preparatory bodies. Thus the factual content of such documents is released to the applicants, while the confidentiality of legal opinions as such is safeguarded.

On the basis of case-law established over several years<sup>16</sup>, and confirmed in 2004 by the Court of First Instance in its judgment in the Turco case<sup>17</sup>, the Council considers that the independent advice provided for the Council by the Legal Service allows the Council to ensure that its acts comply with Community law and to pursue the discussion on the legal aspects of a dossier. If the Council were to lose that instrument, the efficiency of its work would be compromised. This is why it is in the public interest that the Council should have access to independent legal advice.

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<sup>16</sup> In this connection, see the order of the Court of First Instance of 3 March 1998 in Case T-610/97 R, Carlsen and others v. Council, ECR 1998, p. II-485, paragraphs 45 to 47, and its ruling of 8 November 2000 in case T-44/97, Ghignone and others v. Council, ECR 2000, p. II-1023, paragraphs 47 and 48. This case-law was cited by the Court in its order of 23 October 2002 in case C-445/00, Austria v. Council, paragraph 12.

<sup>17</sup> See judgment by the Court of First Instance of 23 November 2004 in Case T-84/03 Maurizio Turco v. Council (not yet published in the ECR), paragraphs 62 et seq. This judgement is currently under appeal (Cases C-39/05 P and C-52/05 P).



#### IV. KEY DEVELOPMENTS

##### 1. *Impact of the improved openness of Council deliberations on the Institution's public access policy*

Following the adoption of an overall policy on transparency by the European Council in June 2006, a number of measures have been taken with a view to further improve public access to the decision-making process of the Council<sup>18</sup>. Thus, the relevant provisions of the Council's Rules of Procedure have been modified with a view to further open up the work of the institution, by making public:

- all Council deliberations on legislative acts to be adopted by co-decision;
- the Council's first deliberations on legislative acts other than those adopted by co-decision and the subsequent deliberations on a particular act, unless the Council or the Permanent Representatives Committee decide otherwise;
- the General Affairs and External Relations Council's deliberations on the 18 month programme, as well as other Council configurations' deliberations on their priorities;
- the Commission's presentation of its five year programme, of its annual work programme and of its annual policy strategy, as well as the ensuing debate;
- other debates on important issues affecting the interests of the Union and its citizens<sup>19</sup>.

Moreover, all documents mentioned on the agenda for an open Council meeting are published before that Council meeting is held, pursuant to Article 11 (5) of Annex II to the Council's Rules of Procedure<sup>20</sup>. This means in practice that documents listed under a public deliberation item or an item for a public debate which have not been released upon circulation are to be disclosed. In the second half of 2006, more than 225 documents were made available online via the public register at the eve of the relevant Council session.

In addition, measures have been taken in order to substantially improve the technical means used to broadcast, in all official languages of the institutions of the European Union, public Council deliberations and debates, notably through the use of the Internet. The efforts to further improve the live broadcast of Council meetings will be continued.

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<sup>18</sup> See document 10633/1/06 REV 1, pp. 23 and 24.

<sup>19</sup> See notably Article 8 of Council Decision 2006/683/EC, Euratom of 15 September 2006, adopting the Council's Rules of Procedure, JO L 285, 16.10.2006, p. 47. Following a Coreper decision to that effect, the organisation of public deliberations and debates in the Council as provided for in the amended version of Article 8 were applied as from the 1<sup>st</sup> of July 2006, i.e. even before the formal adoption of the amended Rules of Procedure by the General Affairs Council on 15 September 2006.

<sup>20</sup> JO L 285, 16.10.2006, pp. 63-64.

A special "Open Sessions" entry has been created on the Council's web site, enabling interested citizens to watch the webcasts and to consult all documents related to the public Council sessions as well as background notes, press releases and - following each public deliberation that leads to a vote on a legislative act - also a detailed outcome of the voting.

In December 2006, the Presidency submitted a preliminary report to the Council on the implementation of the overall policy on transparency and assessment of its impact on the effectiveness of the Council's work<sup>21</sup>. A more substantive review on their implementation and effects of the overall policy on transparency will be conducted by the end of 2007, when more practical experience has been acquired.

While, at the time of the preliminary assessment, the new transparency measures did not appear to have had a negative impact on the effectiveness of the Council's work<sup>22</sup>, the number of public sessions concerning legislative as well as non-legislative issues had increased substantially during the last six months of 2006<sup>23</sup>, and a considerable number of visits had been recorded for the new facilities providing access to the webcasts and the documents related to the public Council sessions<sup>24</sup>.

## 2. *Interinstitutional Committee on Access to Documents*

An Interinstitutional Committee to examine best practice, address possible conflicts and discuss future developments on public access to documents was established in 2002 under Article 15(2) of Regulation (EC) No 1049/2001.

The committee did not meet at political level during the reference period. However, a number of meetings between the Council, Parliament and Commission departments responsible for applying Regulation (EC) No 1049/2001 were held in 2006 in order to explore the possibility of increasing the user-friendliness of the public registers of the three institutions and with a view to compare and exchange practical experience as regards the application of the Regulation in the light of recent case-law on public access to documents.

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<sup>21</sup> See document 15951/1/06 REV 1.

<sup>22</sup> A more substantive review on their implementation and effects of the overall policy on transparency will be conducted by the end of 2007, when more practical experience has been acquired.

<sup>23</sup> While, during the first half of 2006, 17% of all legislative discussions in the Council took place in public, this figure had risen to 76% during the second half of the year. Altogether 122 legislative items ("A" items as well as "B" items) and 45 non-legislative issues (all "B" items) were dealt with in public during the second half of 2006, which brings the number of topics dealt with in public during that period to a total of 167 items.

<sup>24</sup> By the end of 2006, more than 40 000 visits had been recorded for these new facilities on the Council's web site.

3. *Regulation (EC) No 1367/2006 on the application of the provisions of the Århus Convention on Access to Information in Environmental Matters*

In September 2006, the European Parliament and the Council jointly adopted Regulation 1367/2006 on the application of the provisions of the Århus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies<sup>25</sup>.

As already mentioned in a previous annual report on access to documents, the UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Århus Convention) was adopted and signed by the European Community and its Member States in 1998<sup>26</sup>. The Community approved the convention by Council Decision 2005/370/EC on 17 February 2005<sup>27</sup>.

By virtue of Regulation (EC) No 1367/2006, that shall apply from 28 June 2007, any natural or legal person has a right of access to environmental information held by any Community institution or body<sup>28</sup>. Where Regulation (EC) No 1049/2001 provides for exceptions, these shall apply subject to any more specific provisions laid down in Regulation (EC) No 1367/2006 concerning requests for environmental information.

As regards Article 4(2), first and third indents, of Regulation (EC) No 1049/2001<sup>29</sup>, an overriding public interest in disclosure shall be deemed to exist where the information requested relates to emissions into the environment. As regards the other exceptions set out in Article 4 of Regulation (EC) No 1049/2001, 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.

In addition to the exceptions under Article 4 of Regulation (EC) No 1049/2001, the 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<sup>30</sup>.

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<sup>25</sup> JO L 264, 25.9.2006, p. 13.

<sup>26</sup> See Council Annual Report on access to documents 2004 (doc. 8896/05), pp. 11-13

<sup>27</sup> Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Århus Convention, OJ L 124, 17.5.2005, p. 1.

<sup>28</sup> Regulation (EC) No 1367/2006 therefore also covers the Court of Justice, except when the Court is acting in its judicial capacity.

<sup>29</sup> With the exception of investigations, in particular those concerning possible infringements of Community law; cf. Article 6 (1) of Regulation (EC) No 1367/2006.

<sup>30</sup> See Article 6 (2) of Regulation (EC) No 1367/2006.

The provisions laid down in Regulation (EC) No 1367/2006 on the collection and dissemination of environmental information go somewhat beyond those laid down in Articles 12 and 13 of Regulation (EC) No 1049/2001. The following will be automatically made available to the public:

- texts of international treaties, conventions or agreements, Community legislation on the environment or relating to it, and of policies, plans and programmes relating to the environment;
- progress reports on the implementation of those instruments;
- steps taken in proceedings for infringements of Community law from the stage of the reasoned opinion pursuant to Article 226 (1) of the EC Treaty;
- reports on the state of the environment which the Commission is required to publish and disseminate at regular intervals not exceeding 4 years;
  
- data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;
- authorisations with a significant impact on the environment, and environmental impact studies and risk assessments concerning environmental elements.

In appropriate cases, Community institutions and bodies may satisfy their obligations regarding the collection and dissemination of environmental information by creating links to Internet sites where the information can be found.

## V. COMPLAINTS LODGED WITH THE EUROPEAN OMBUDSMAN AND LEGAL ACTION TAKEN

### A. COMPLAINT LODGED WITH THE EUROPEAN OMBUDSMAN

The following section of this report refers to the only complaint lodged in 2006 concerning the Council's application of Regulation No 1049/2001.

*Complaint 386/2006/BM, submitted to the Ombudsman on 8 February 2006*

This complaint relates to the Council's refusal to grant access to document 15066/05, which is a letter from the Chairman of the Administrative Board of the Office for Harmonization in the Internal Market (OHIM) (Trade marks and Designs), to the Council's Secretary-General/High Representative for CFSP, containing at annex a summary of decisions taken during the 30th meeting of the above-mentioned Administrative Board held in Alicante on 23 November 2005, and a list of candidates for the post of President of the Boards of Appeal.

Given that the requested document originated from OHIM, the Council consulted that agency, in accordance with Article 4 (4) of Regulation No 1049/2001. On 19 December 2005, OHIM agreed to the release of the document, but requested the Council to withhold from page 5 the names of the candidates appearing on the above-mentioned list on that page. In OHIM's view, the identity of these candidates is protected pursuant to Article 4(1)(b) of the Regulation (protection of privacy).

In its reply to the applicant's initial request, dated 19 December 2005, the General Secretariat granted partial access to this document on these lines, since it saw no reasons to deviate from OHIM's assessment. The Council subsequently confirmed this position in its reply to the applicant's confirmatory request, in which he had asked the Institution to reconsider its initial refusal by granting full access to document 15066/05.

In his complaint to the Ombudsman, the complainant alleged that the Council's decision not to grant him access to the results of the selection process for the position of President of the Boards of Appeal of the OHIM was unjustified and insisted on obtaining access to the document, showing his name anywhere it might appear and omitting only the names of other shortlisted candidates.

The complainant subsequently informed the Ombudsman, that he would be willing to accept that if the Council gave him partial access to a document containing information about himself, it would be obliged to provide the same partial access to any other person in accordance with Regulation 1049/2001.

In its opinion on this complaint, the Council pointed out that there were two different aspects to the matter, namely (1) the question whether the Council committed maladministration at the time of the adoption of the contested confirmatory decision and (2) the question whether the additional information provided by the complainant in his complaint to the Ombudsman would now allow the Council to take a different decision.

As indicated above, the General Secretariat of the Council had initially consulted OHIM pursuant to Article 4 (4) of Regulation 1049/2001, which provides as follows: *“As regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed”*.

In its opinion on the complaint, the Council took the view that although it is true that in the system of Article 4(4) of the Regulation, the final decision on confirmatory requests no longer lies with the originator, it is equally true that Article 4(4) must be interpreted in a manner that gives full effect to its wording. Apart from the fact that the originator is often best placed to assess the possible harm that release could cause, it was also highly unlikely that the drafters of the Regulation had intended the consultation of the originating third party to be a mere formality. The operation of Article 4(4) presumes a measure of mutual trust between the institutions and bodies as regards the treatment of their respective documents. The Council could therefore not simply ignore OHIM’s opinion as regards a document drawn up by it.

The application by the Council of the provision laid down in Article 4 (4) of the Regulation should be seen against this background. The Council normally consults the third party and, unless that party's opinion is manifestly unreasonable or illegal, it respects the opinion given by the third party concerned.

In the case at hand, the question was not whether the Council would have arrived at exactly the same conclusion as OHIM. Rather, the test applied was whether OHIM's reasoning was manifestly incorrect. In the Council's judgment, this was not the case. Consequently, access to the three names was refused. The Council considered that this manner of application Article 4 (4) was reasonable and well within the limits of the law. It moreover minimised the risk that the Council incurred a legal liability as a result of disclosure contested by the originating third party.

As regards the second question, the Council investigated whether the additional information provided to the Ombudsman by the complainant would allow it to provide more information, although this issue strictly speaking went beyond the scope of his complaint. To that effect, it reconsulted OHIM.

Following this reconsultation, and given that the complainant seemed to be mostly interested in knowing whether he was one of the three candidates named in the document and how many votes he obtained, the Council could inform the complainant that he was not mentioned in the document.

This case is still pending.

## B. LEGAL ACTION

### *Rulings given under the rules on access to documents*

In 2006, no rulings were given by the Community Courts in cases concerning access to Council documents. However, on 1 February 2007, the Court of Justice handed down its judgment in case C-266/05 P, in which the applicant, José María Sisón had brought an appeal against the judgment of the Court of First Instance of 26 April 2005 in Joined Cases T-110/03, T-150/03 and T-405/03<sup>31</sup>.

In this case, the appellant submitted that the above-mentioned judgment should be annulled on the grounds that

- the Court of First Instance had unduly limited the scope of its review of legality without responding to the applicant's arguments
- its review of legality effectively lead to a complete discretion of the Council and to a complete denial of the right of access to documents, and, moreover

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<sup>31</sup> See the summary of this ruling set out on pages 31 and 32 of the Council Annual report on access to documents - 2004.

- lead to a denial of the duty to state reasons and therefore infringed upon Article 253 of the EC Treaty
- the Court of First Instance had misinterpreted and misapplied Articles 4 and 9 of Regulation 1049/2001.

In its judgment, the Court rejected these grounds of appeal and dismissed the appeal as unfounded in its entirety.

As far as the first ground of appeal is concerned, the Court recalled that the scope of the review of legality incumbent on the Community Courts under Article 230 of the EC Treaty can vary according to the matters under consideration.

In the case at hand, the Court of First Instance correctly took the view that a wide discretion is conferred upon an institution when it justifies its refusal of access by reference to the protection of the public interest provided for in Article 4(1)(a) of Regulation No 1049/2001, and that the Community Court's review of the legality of such a decision must therefore be limited to verifying whether the procedural rules and the duty to state reasons have been complied with, whether the facts have been accurately stated, and whether there has been a manifest error of assessment or a misuse of powers.

Moreover, the Court of First Instance was correct to hold that the particular interest which may be asserted by a requesting party in obtaining access to a document concerning him personally cannot be taken into account when the mandatory exceptions provided for in Article 4 (1) (a) of the Regulation are applicable. The purpose of Regulation 1049/2001 is to give the general public a right of access to documents of the institutions and not to lay down rules designed to protect the particular interest which a specific individual may have in gaining access to one of them<sup>32</sup>.

As regards the alleged infringement of Article 253 of the EC Treaty, the Court of Justice pointed out that the statement of reasons required by this Article must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community Court to exercise its power of review.

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<sup>32</sup> See the judgment of 1 February 2007, paragraphs 43 and 47.



The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question.

In the present case, the Court of First Instance correctly applied those principles and did not err in law in deciding that, brief though it may be, as regards both the total refusal of access and the refusal of partial access to the documents in respect of which disclosure was sought, the reasoning of the first decision refusing access was still adequate in the light of the context of the case and sufficient to enable the appellant to ascertain the reasons for the refusal and the Court of First Instance to carry out the review of legality incumbent upon it.

The Court of First Instance correctly took the view that such brevity is justified, in particular, by *the need not to undermine the sensitive interests protected by the exceptions to the right of access established by the first and third indents of Article 4(1)(a) of Regulation No 1049/2001 through disclosure of the very information which those exceptions are designed to protect*<sup>33</sup>.

As regards the applicant's final ground of appeal, alleging infringement of the right of access on the ground of misconstruction of Articles 4 (5) and 9 (3) of the Regulation, the Court of Justice pointed out that the documents to which the Council had refused access were sensitive documents within the meaning of Article 9 of Regulation 1049/2001, and that in view of the special nature of sensitive documents, Article 9(3) of Regulation No 1049/2001 *requires the consent of the originating authority* before such documents are recorded in the register or released.

The Court of First Instance was therefore correct to hold that it followed from those provisions *that the originating authority of a sensitive document is empowered to oppose disclosure not only of that document's content but even of its existence*, and to conclude that such authority also has the power to *prevent disclosure of its own identity in the event that the existence of a sensitive document should become known*<sup>34</sup>.

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<sup>33</sup> Idem, paragraphs 80 – 82.

<sup>34</sup> Idem, paragraphs 101-102.

The Court of Justice went on to conclude that as the legal analysis and findings of fact thus made by the Court of First Instance in the judgment under appeal were sufficient in themselves to support the conclusion that the Council was entitled to refuse to disclose the identity of the originating authority (in this case of the State concerned), it was unnecessary to examine the complaint alleging misconstruction of Article 4(5) of Regulation No 1049/2001, since such an examination could not, in any event, cast doubt on that conclusion or, therefore, on the operative part of the judgment under appeal.

*Pending Court cases concerning Council decisions to refuse access to documents*

Four cases in which the legality of Council decisions refusing access on the basis of Regulation No 1049/2001 is contested are currently pending before the Community Courts, two of which were already mentioned in the Council's annual report on access to documents - 2004, to which the reader is referred <sup>35</sup>.

As regards cases C-39/05 P, *Kingdom of Sweden v. Council*, and C-52/05 P, *Maurizio Turco v. Council*, in which the applicants appealed the judgment of the Court of First Instance of 23 November 2004 in Case T-84/03 (*Maurizio Turco v. Council*) <sup>36</sup>, it should be recalled that these cases were joined for the purposes of the written procedure, the oral procedure and the judgment by order of the President of the Court of 19 April 2005.

*Pending Court cases concerning Commission decisions to refuse access to documents in which the Council is intervening as third party.*

With regard to two court cases, mentioned in the previous annual report, in which the Council has intervened as a third party, the action in case T-5/05, *Verband der Internationalen Caterer in Deutschland e.V. v. Commission*, has been withdrawn. The case was consequently removed from the register of the Court of First Instance by order of 22 January 2007.

The Council intervenes in case T-444/05, *S.p.A. Navigazione Libera del Golfo v. Commission*, where the applicant has implicitly called into question the validity of Article 4 (5) of Regulation 1049/2001.

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<sup>35</sup> See the summary of pending cases T-3/00, *Pitsiorlas v. Council and ECB*, and T-264/04, *WWF-EPO v. Council*, in the Council's Annual Report on access to documents – 2004, pp. 32 and 33.

<sup>36</sup> See judgment in case T-84/03 (mentioned in the Council's Annual Report for 2004, pp. 30-31), paragraphs 62 and following. In his application in appeal, Mr Turco argues, *inter alia*, that the Court of First Instance misinterpreted and misapplied the term "legal advice" in Article 4(2) of Regulation No 1049/2001 and that the Court erred in qualifying the legal opinion at issue as "legal advice", whereas the Kingdom of Sweden argues in its application that the Court of First Instance erred in finding that there is a "general secrecy requirement" for legal service opinions in legislative matters.

## VI. FINAL REMARKS

The Council's experience in implementing Regulation No 1049/2001 in 2006 highlights the importance of its public register as a search tool for members of the public seeking to keep abreast of developments at Community level.

As stated in the first part of this report, the number of users of the register increased by 48,7% during the reference period, whereas the number of visits rose by 61,8 % (1 722 354 visits in 2006 against 1 064 039 in 2005); this was the fourth successive annual increase. It should be pointed out here that 65 % of the Council documents produced in 2006 – i.e. 102 087 of the 157 707 documents listed in the register – were made directly accessible to the public upon circulation. Lastly, since 1 February 2004 any new document to which the Council has provided partial access may be consulted online.

In spite of the increasing number of documents made available directly via the register upon circulation, an increase in the number of requests and, in particular, in the number of documents concerned by the requests (11 353 in 2006 against 9 457 in 2005) was observed during the reference period.

It should also be noted that requests for access relate almost exclusively to documents which are listed but not directly accessible via the register. A total of 949 documents of the documents considered (representing 8,5% of the documents requested in 2006) were classified (45 as CONFIDENTIEL UE and 904 as RESTREINT UE); the often highly complex process of examining such documents represents an additional workload not only for the Council staff dealing with the requests as soon as they are received, but also for officials in the various departments which produced the documents, who in many cases must themselves examine the requested documents on the basis of Regulation No 1049/2001.

That said, despite the increasingly complex nature of the dossiers to be examined, the General Secretariat of the Council is coping with the ensuing growing administrative burden, while meeting the time-limits laid down in Regulation (EC) No 1049/2001. By way of illustration, in 2006 processing time for initial requests was on average 13 working days. In respect of confirmatory applications, which are examined by the Working Party on Information before being submitted to Coreper and the Council for adoption, the average was 24 working days in 2006, compared to 26 working days in 2005.

In this regard, the contribution made by the Working Party on Information to the processing of confirmatory applications must be noted. The Working Party met on 23 occasions in 2006. Its main tasks include examining documents in respect of which a confirmatory application has been made, and examining and finalising the draft replies to such applications, which in a number of cases deal with complex issues relating to public safety, defence and military affairs, or international relations.

The rate of access to Council documents in 2006 rose in comparison to 2005 (87,7% in 2006 as against 81,2% in 2005). Moreover, these figures should be seen in conjunction with the rise in the number of documents requested (up 20% and the above-mentioned increase in the number of documents made directly available via the register upon circulation (102 087 in 2006 against 77 832 in 2005, representing an increase of 31,2 % in relation to the previous year).

In conclusion, both the analysis of the processing of requests for access and the public's use of the register of Council documents suggest that the aims set by the Treaties and by Regulation No 1049/2001 continued to be achieved in 2006.



**1. Number of applications pursuant to Regulation No 1049/2001**

2002	2003	2004	2005	2006
2.391	2.830	2.160	2.100	2.224

**2. Number of documents requested by initial applications**

2002	2003	2004	2005	2006
9.349	12.565	12.907	9.457	11.353

**3. Documents released by the General Secretariat of the Council at the initial stage**

2002	2003	2004	2005	2006
8.158	10.912	10.971	7.535	9.606
partially/wholly 1.069 7.089	partially/wholly 1.928 8.984	partially/wholly 1.092 9.879	partially/wholly 1.254 6.281	partially/wholly 1.155 8.451

**4. Number of confirmatory applications** (confirmatory applications may be made if initial application is refused)

2002	2003	2004	2005	2006
43	45	35	51	40

**5. Number of documents considered by the Council following confirmatory applications + number of documents released**

2002	2003	2004	2005	2006
144	162	198	253	142
89 partially/wholly 65 24	64 partially/wholly 42 22	113 partially/wholly 36 77	130 partially/wholly 60 70	99 partially/wholly 53 46

**6. Rate of document released for the procedure as a whole <sup>1</sup>**

2002		2003		2004		2005		2006	
76,4%	88,6%	71,7%	87,4%	77%	85,7%	67,3%	81,2%	76,8%	87,7%

**7. Number of documents referred to in the public Register + number of public/downloadable documents**

2002		2003		2004		2005		2006	
448.236	257.052 (57.3%)	569.372	354.421 (62.2%)	691.410	454.473 (65.7%)	727.685	483.577 (66.4%)	849.117	565.222 (66,6%)

<sup>1</sup> Based on documents released wholly (left column) or wholly + partially (right column).

## 1. Professional profile of the applicants (initial applications)

		2002		2003		2004		2005		2006	
Civil society	Environmental Lobbies	26,7%		21,4%		21,8%		1,1%	17,2%	0,9%	17,6%
	Other groups of interests							4,5%		5,3%	
	Industrial/Commercial Sector							10,4%		10,3%	
	NGOs							1,2%		1,1%	
Journalists		2%		2,1%		2,6%		2,3%		2,3%	
Lawyers		11%		13%		10,7%		10,2%		9,1%	
Academic World	University Research	23,4%	26%	24%	26,5%	25,5%	27,7%	31%	32,3%	32,2%	34,5%
	Library	2,6%		2,5%		2,2%		1,3%		2,3%	
Public authorities (non-EU institutions, third-country representatives, etc.)		4,9%		8,4%		7,3%		6,2%		6,9%	
Members of the European Parliament and their assistants		2,5%		2,3%		2,1%		2,4%		1,5%	
Others		5,9%		9,3%		10,4%		12,6%		14,5%	
Undeclared professional origin		21%		17%		17,4%		16,8%		13,6%	

## 2. Professional profile of the applicants (confirmatory applications)

		2002		2003		2004		2005		2006	
Civil society	Environmental Lobbies	16%		7,9%		10,4%		0%	9,4%	0%	8,6%
	Other groups of interests							3,2%		8,6%	
	Industrial/Commercial Sector							3,1%		0%	
	NGOs							3,1%		0%	
Journalists		12%		5,3%		6,9%		6,3%		5,7%	
Lawyers		12%		23,7%		17,2%		9,4%		11,4%	
Academic world	University Research	28%	28%	34,2%	34,2%	34,5%	34,5%	28,1%	28,1%	51,4%	54,3%
	Library	0%		0%		0%		0%		2,9%	
Public authorities (non-EU institutions, third-country representatives, etc.)		0%		2,6%		0%		3,1%		0%	
Members of the European Parliament and their assistants		12%		10,5%		10,4%		3,1%		0%	
Others		4%		2,6%		10,3%		15,6%		11,4%	
Undeclared professional origin		16%		13,2%		10,3%		25%		8,6%	

### 3. Geographical spread of the applicants (initial applications)

	2002	2003	2004	2005	2006	
Belgium	27,5%	24,5%	27%	27,5%	26,1%	
Czech Republic	0,1%	0,5%	0,9%	0,8%	1%	
Denmark	2%	1,8%	1,7%	1,2%	1,3%	
Germany	12,9%	14,4%	14,2%	12,7%	15,4%	
Estonia	0%	0,1%	0,1%	0,1%	0,4%	
Greece	1,2%	0,9%	0,9%	1,2%	1,3%	
Spain	6,4%	6,4%	4,7%	5,3%	5,7%	
France	7,2%	6,1%	6,5%	7,7%	8,1%	
Ireland	1,3%	1,1%	0,8%	1%	0,9%	
Italy	4,7%	5,2%	6,6%	7%	6,6%	
Cyprus	0%	0,3%	0,3%	0,1%	0,3%	
Latvia	0%	0%	0,1%	0,1%	0,1%	
Lithuania	0,1%	0,3%	0,3%	0,4%	0,4%	
Luxembourg	0,8%	2%	0,8%	0,6%	0,7%	
Hungary	0%	0,8%	0,7%	0,8%	0,4%	
Malta	0%	0,2%	0,3%	0,2%	0,2%	
Netherlands	4,7%	4,9%	5,6%	7%	6%	
Austria	1,9%	2%	1,7%	2,1%	1,6%	
Poland	0,2%	1,5%	1,2%	1,4%	1,5%	
Portugal	1,8%	1,5%	0,6%	1%	1,1%	
Slovenia	0%	0,4%	0,2%	0,2%	0,4%	
Slovakia	0%	0,2%	0,4%	0,3%	0,3%	
Finland	0,5%	0,8%	0,4%	0,4%	0,5%	
Sweden	2%	1,3%	1,7%	1,8%	1,6%	
United Kingdom	9,9%	9,5%	8,1%	7,9%	7,8%	
Third countries	Candidate countries	0%	0,3%	0,3%	1,3%	1,7%
	Others	6,3%	5,1%	6,7%	6,7%	6,8%
Non specified	8,5%	7,9%	7,2%	3,2%	1,8%	



#### 4. Geographical spread of the applicants (confirmatory applications)

		2002	2003	2004	2005	2006
Belgium		20%	26,3%	48,3%	28,1%	17,1%
Czech Republic		0%	0%	0%	0%	0%
Denmark		8%	0%	3,5%	0%	0%
Germany		20%	15,8%	3,5%	12,5%	22,8%
Estonia		0%	0%	0%	0%	0%
Greece		0%	0%	0%	0%	0%
Spain		4%	0%	3,4%	3,1%	0%
France		8%	5,3%	0%	3,1%	5,7%
Ireland		0%	0%	0%	0%	0%
Italy		4%	0%	10,3%	9,4%	8,6%
Cyprus		0%	0%	0%	3,1%	0%
Latvia		0%	0%	0%	0%	0%
Lithuania		0%	0%	0%	0%	0%
Luxembourg		0%	0%	0%	0%	0%
Hungary		0%	0%	0%	0%	2,9%
Malta		0%	0%	0%	0%	0%
Netherlands		8%	29%	6,9%	9,4%	8,6%
Austria		0%	0%	0%	6,3%	0%
Poland		0%	2,6%	0%	0%	2,9%
Portugal		0%	0%	0%	0%	0%
Slovenia		0%	0%	0%	0%	0%
Slovakia		0%	0%	0%	0%	0%
Finland		0%	0%	0%	0%	0%
Sweden		4%	0%	0%	3,1%	2,8%
United Kingdom		20%	18,4%	20,7%	18,8%	22,9%
Third countries	Candidate countries	0%	0%	0%	0%	0%
	Others	0%	2,6%	3,4%	3,1%	5,7%
Non specified		4%	0%	0%	0%	0%

## 5. Sector

	2002	2003	2004	2005	2006
Agriculture, Fisheries	4,6%	4,7%	4,6%	4,2%	5,9%
Internal Market	14,7%	16,3%	14,2%	6,2%	4,6%
Research	0,3%	0,1%	0,3%	0,3%	0,6%
Culture	0,8%	0,5%	0,2%	0,5%	1,1%
Education/Youth	0,9%	0,8%	1,4%	0,7%	1,2%
Industry	1,8%	0,5%	0,4%	0,4%	0,3%
Competitiveness	0%	0,2%	2,2%	5,3%	5,8%
Energy	2,9%	2,9%	1,4%	1,6%	1,1%
Transport	5,1%	4,4%	4,9%	5,3%	3,8%
Environment	7,9%	5,2%	6,8%	7,7%	6,6%
Health and Consumer	2,5%	4%	4,3%	3,1%	2,3%
Economic and Monetary Policy	10,7%	9,1%	3,3%	2,9%	2,6%
Tax Questions – Fiscal Issues	0%	6%	3,2%	4,4%	2,5%
External Relations – CFSP	8,6%	9,1%	14,6%	12,8%	14,3%
Civilian Protection	0,4%	0%	0,3%	0,1%	0,1%
Enlargement	2,2%	2,4%	1,8%	2,2%	1,8%
Defence and Military matters	0%	0,7%	2,9%	2,5%	2,4%
Assistance for Development	0,4%	0,2%	0,3%	0,7%	0,7%
Regional Policy and Economical/Social Cohesion	0,3%	0,1%	0%	0,9%	1,2%
Social Policy	3,3%	3,5%	2,7%	3%	2,9%
Justice and Home Affairs	24,4%	22%	20,1%	22,5%	24,5%
Legal questions	2%	1,6%	2,5%	3,5%	3,8%
Functioning of the institutions	1,6%	1,2%	1,5%	1,3%	1,7%
Financing of the Union (Budget, Statute)	0,9%	1%	0,3%	0,2%	0,6%
Transparency	0,9%	0,8%	0,9%	0,3%	0,6%
General policy questions	1,6%	1,2%	1,7%	1%	1%
Parliamentary Questions	0%	1,1%	2,9%	5,4%	5,5%
Various (more than five areas)	0%	0%	0,3%	0,4%	0,4%

**6. Reasons for refusal of access (replies provided by the General Secretariat of the Council at the initial stage)**

	2002		2003		2004		2005		2006	
	#	%	#	%	#	%	#	%	#	%
Protection of public interest as regards public security	268	23,1%	270	16%	440	21%	302	15,8%	253	17,1%
Protection of public interest as regards defence and military matters	1	0,1%	62	3,8%	218	11%	123	6,4%	67	4,5%
Protection of public interest as regards international relations	299	24,6%	482	28,7%	330	16,2%	395	20,6%	182	12,3%
Protection of public interest as regards the financial, monetary or economic policy of the Community or a Member State	10	0,7%	13	0,7%	21	1,1%	16	0,8%	1	0,1%
Protection of privacy and the integrity of the individual (protection of personal data)	2	0,2%	5	0,3%	13	0,7%	4	0,2%	5	0,3%
Protection of commercial interests of a natural or legal person, including intellectual property	0	0%	0	0%	1	0%	0	0%	0	0%
Protection of court proceedings and legal advice	136	11,4%	190	10,9%	197	8,8%	34	1,8%	29	2%
Protection of the purpose of inspections, investigations and audits	0	0%	0	0%	0	0%	1	0%	4	0,3%
Protection of the Institution's decision-making process	341	28,1%	547	31,2%	697	33,3%	925	48,3%	637	43,2%
Several reasons together or other reasons	131	11,3%	141	8,4%	158	7,8%	116	6,1%	298	20,2%
Document not held by the Council/Other author	6	0,5%	0	0%	1	0,1%	0	0%	0	0%

**7. Reasons for refusal of access (replies provided by the General Secretariat of the Council following confirmatory applications)**

	2002		2003		2004		2005		2006	
	#	%	#	%	#	%	#	%	#	%
Protection of public interest as regards public security	3	5,4%	4	4%	24	27%	61	49,6%	16	37,2%
Protection of public interest as regards defence and military matters	0	0%	2	2%	22	25,9%	7	5,7%	7	16,3%
Protection of public interest as regards international relations	4	7,3%	61	61,6%	19	21,2%	25	20,3%	6	14%
Protection of public interest as regards the financial, monetary or economic policy of the Community or a Member State	0	0%	7	7,1%	0	0%	0	0%	0	0%
Protection of privacy and the integrity of the individual (protection of personal data)	0	0%	0	0%	0	0%	0	0%	0	0%
Protection of commercial interests of a natural or legal person, including intellectual property	0	0%	0	0%	0	0%	0	0%	0	0%
Protection of court proceedings and legal advice	14	23,6%	7	7,1%	4	4,7%	0	0%	2	4,6%
Protection of the purpose of inspections, investigations and audits	0	0%	0	0%	0	0%	0	0%	0	0%
Protection of Institution's decision-making process	21	38,2%	14	14,2%	10	11,8%	14	11,4%	3	7%
Several reasons together or other reasons	14	25,5%	4	4%	8	9,4%	16	13%	9	20,9%
Document not held by the Council/other author	0	0%	0	0%	0	0%	0	0%	0	0%

**8. Average number of working days to reply to an application or to a complaint made to the European Ombudsman**

	2002	2003	2004	2005	2006
For the initial applications	10 (2391 appl.)	7 (2830 appl.)	9 (2160 appl.)	13 (2100 appl.)	14 (2224 appl.)
For the confirmatory applications <sup>1</sup>	24 (43 appl.)	23 (45 appl.)	24 (35 appl.)	26 (51 appl.)	24 (40 appl.)
Ponderated average (initial + confirmatory)	10,25	7,25	9,24	13,31	14,17
Ombudsman <sup>1</sup>	63	46	36	38	57

**9. Number of applications with prolonged deadline in conformity with Art. 7(3) and 8(2) of Regulation (EC) No 1049/2001**

	2002	2003	2004	2005	2006
Initial applications	148 of 2391, being 6,2% of the applications	134 of 2830, being 4,7% of the applications	192 of 2160, being 8,8% of the applications	327 of 2100, being 15,6% of the applications	414 of 2224, being 18,6% of the applications
Confirmatory applications <sup>1</sup>	29 [of 43]	37 [of 45]	24 [of 35]	40 [of 51]	32 [of 40]

<sup>1</sup> Confirmatory applications and complaints to the European Ombudsman are examined by the Council's Working Party on Information and by the Permanent Representatives Committee (Part 2). Replies to the applicants and to the European Ombudsman are adopted by the Council.