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Annual report of the Council
on access to documents
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This brochure contains the Council's annual report on the implementation of Regulation (EC) No 1049/2001 regarding public access to documents in 2003.

The report, adopted by the Council in April 2004, presents the regulatory, administrative and practical adjustments made by the Council to ensure compliance with the provisions of Regulation (EC) No 1049/2001.

It also gives information on the Council's public register of documents as well as statistics on public access to documents.

In addition, the report highlights the key developments in the second year of implementation of the Regulation and reviews complaints submitted to the European Ombudsman and cases brought before the Court of First Instance regarding access to Council documents.

Additional information (and previous reports) on access to Council documents and on other transparency issues can be found on the Internet website <http://ue.eu.int/en/summ.htm>, under "Transparency".

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**SECOND 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**

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*".

In response to this provision, each of the three institutions published an initial annual report at the beginning of 2003 on the implementation of Regulation No 1049/2001¹. It should also be mentioned that as required by Article 17(2) of the Regulation a report on the implementation of the principles of Regulation No 1049/2001 was published by the Commission on 30 January 2004².

On the model of the Council's first report for 2002, the first part of this report sets out the regulatory, administrative and practical adaptations made by the Council in 2003 in order to ensure compliance with the provisions of Regulation No 1049/2001. The second part analyses the figures for requests for access for the period beginning on 1 January until 31 December 2003. A third part relates more specifically to the Council's application of exceptions to the right of access laid down in Article 4 of Regulation No 1049/2001. A fourth part lists the key events of the second year of implementation of the Regulation and a fifth part deals with complaints submitted to the European Ombudsman and legal actions. The conclusions of the report are given in a sixth and last part.

Furthermore, this report addresses a number of aspects relating to the application of the exceptions laid down in Article 4 of Regulation No 1049/2001 and to the arrangements applicable to the sensitive documents referred to in Article 9 thereof, insofar as the comments made by the Commission on these matters in its abovementioned evaluation report call for further clarification by the Council³.

¹ Council report adopted on 8 April 2003 (contained in 7957/03 INF 57 API 47 JUR 155 dated 31 March 2003); report from the Commission of 29 April 2003 (COM (2003) 216 final); note from the Secretary-General of the European Parliament to the Bureau dated 23 January 2003 (PE 324.892/BUR).

² COM (2004) 45 final (contained in 5983/04 INF 24).

³ See especially Part III of this report.

I. REGULATORY, ADMINISTRATIVE AND PRACTICAL ADAPTATIONS

Among the measures taken by the Council in order to ensure compliance with the provisions of Regulation No 1049/2001 in this second complete year after its entry into force, the following should be instanced in particular:

- adoption in September 2003 of Regulation (EC, Euratom) No 1700/2003 amending Regulation (EEC, Euratom) No 354/83 governing public access to historic archives (documents over 30 years old),
- organisation of training sessions for the staff of the General Secretariat of the Council and national civil servants of the acceding and candidate countries,
- the implementation of a number of technical adjustments with a view to making documents to which the Council grants partial access directly available through its public register of documents.

1) *Adoption of Regulation (EC, Euratom) No 1700/2003*

The adoption of Council Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 amending Regulation (EEC, Euratom) No 354/83⁴ follows from Article 18(2) of Regulation No 1049/2001, which states that "*Within six months of the entry into force of this Regulation, the Commission shall examine the conformity of Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (...) with this Regulation*".

It should be pointed out in this context that, under Article 4(7) of Regulation (EC) No 1049/2001, the exceptions provided to the right of access are only applicable for a maximum period of thirty years, wherever the documents may be kept. However, in the case of documents covered by the exceptions relating to privacy or commercial interests and in the case of sensitive documents, the exceptions may, if necessary, continue to apply after this period.

⁴ OJ L 243, 27.9.03, p. 1.

According to Regulation (EC, Euratom) No 1700/2003, which brought Regulation (EEC, Euratom) No 354/83 into line with the provisions in Regulation (EC) No 1049/2001, exceptions relating to

- protection of privacy and the integrity of the individual as defined in Article 4(1)(b) of Regulation No 1049/2001,
 - protection of the commercial interests of a natural or legal person, including intellectual property, as referred to in the first indent of Article 4(2) of Regulation (EC) No 1049/2001,
- and to
- specific provisions relating to sensitive documents
- may therefore be applicable beyond the thirty-year period.

Similarly, the exception concerning documents classified under one of the secrecy systems laid down in Article 10 of Council Regulation 3 of 31 July 1958 is still applicable.

Although Regulation (EEC, Euratom) No 354/83 as amended by Regulation (EC, Euratom) No 1700/2003 has now been brought into line with Regulation (EC) No 1049/2001 with regard to the exception arrangements applicable, a difference remains between the two Regulations with regard to the institutions covered. Whereas the scope of Regulation No 1049/2001 is restricted to the European Parliament, the Council and the Commission, the provisions laid down in Regulation (EEC, Euratom) No 354/83 governing access to the historical archives have always covered the five Community institutions referred to in Article 7 of the EC Treaty and hence also the Court of Justice and the Court of Auditors.

It should also be mentioned that, following the adoption of Regulation (EC, Euratom) No 1700/2003 amending Regulation (EEC, Euratom) No 354/83, the European Economic and Social Committee, the Committee of the Regions and agencies and similar bodies set up by the Community legislator are also covered by the rules on access to the historical archives⁵.

⁵ On the arrangements for the application of Regulation (EC) No 1049/2001 by the agencies and similar bodies set up by the Community legislator, see Part III, point 1 below (extension of the scope of Regulation (EC) No 1049/2001 to Community agencies and bodies).

2) *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 Regulation also lays down that these registers, which allow citizens to identify the documents likely to interest them, should be operational by 3 June 2002 at the latest. Only the Council had, since 1 January 1999, a public register on the Internet before the entry into force of Regulation No 1049/2001.

The register contains references to all the Council documents contained in it via an automatic archiving system. Accordingly, any non-sensitive document submitted to the Council or to one of its preparatory bodies which is to serve as a basis for deliberations, could influence the decision-making process or reflects the progress made on a given subject is automatically listed in the register. In the case of sensitive documents⁶, the author specifies references which may possibly be included in the register⁷.

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 Rules of Procedure, must be made directly accessible to the public as soon as they are issued. 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 originating from a third party which have been made public by the author or with his consent;
- 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;
- any other text adopted by the Council which is intended for publication in the Official Journal;
- 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 adopted definitively;
- documents which have been made available in full to a member of the public who made an application.

⁶ For the purposes of Regulation (EC) No 1049/2001, "sensitive documents" means documents classified as "CONFIDENTIAL", "SECRET" or "TRES SECRET/TOP SECRET". On this subject, see Article 9(1) of that Regulation.

⁷ See Article 9(2) and Article 11(2) of Regulation No 1049/2001.

As at 31 December 2003 the register listed 467 532 documents, including all languages; the content of 249 935 documents (over half the documents recorded in the register) could be accessed directly. Compared with the previous year the number of documents stored in the register has thus increased by nearly 25% (375 155 in 2002 against 467 532 in 2003), while the number of documents directly accessible via the register has increased by over 48% (168 647 in 2002 against 249 935 in 2003).

By 31 December 2002, the register contained 4 889 documents bearing the code P/A (= partially accessible). These documents were not yet accessible on line, but they could be made available to interested persons on request.

However, all new partially accessible documents will now be directly accessible to the public via the register. Around one hundred documents with the P/A code in the register were accordingly already accessible on line in February 2004, and the public will therefore be able to consult a growing number of documents via the register.

It must, however, be pointed out that the overall number of P/A documents included in the register remains relatively stable (around 4 000). This situation is due to the fact that a large number of P/A documents are legislative dossiers which are made public in their entirety when the negotiations relating to them have been concluded.

In 2003, 181 317 different users logged on to the Internet site of the public register of Council documents; they made a total of 768 725 visits - equivalent to over 2 800 visits per day - and made 5 928 096 consultations (calculated in numbers of screens viewed).

For the period concerned a total of 399 sensitive documents were produced, of which 17 were classified "EU SECRET" and 382 "EU CONFIDENTIAL", all in the original language; of these, 136 "EU CONFIDENTIAL" documents are referred to in the register under Article 9(2) and Article 11(2) of Regulation No 1049/2001.

3) *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 considered, even applications relating to classified documents.

To facilitate the processing of applications concerning classified documents, which require in-depth examination by the relevant departments of the General Secretariat of the Council, a specific consultation procedure has been put in place. This procedure is to enable the officials concerned to conduct the (often very complex) examination of classified dossiers in close cooperation with the authors, and to notify their conclusions to the applicant under the conditions and within the 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.

The average time for processing initial applications in 2003 was 7 working days and, for initial applications, the General Secretariat extended the time-limit in only 4,7% of cases (as against 5,2% in 2002). However, more frequent use was made of confirmatory applications, which must be examined first by the Working Party on Information before being submitted to Coreper and the Council for adoption.

As provided for in Article 6(4) of Regulation No 1049/2001, the Council systematically examines the possibility of granting partial access to the documents requested. This practice ensures greater transparency, particularly in the legislative field. In general, the Council grants access to the content of preparatory documents relating to legislative acts when they are still the subject of discussion, excluding only references to the delegations. Interested parties can thereby follow the progress of discussions without undermining the institution's decision-making process.

Up until the end of 2003 the documents to which the Council had granted partial access were not directly accessible via the public register of Council documents. However, persons wishing to consult partially accessible documents, which bear the code P/A in the register, could always submit an application for access to the "Transparency – access to documents" unit of the General Secretariat of the Council, which would then send them the documents in question.

As already mentioned, however, a number of technical adaptations were made in 2003, and it is now possible to consult on-line all new documents to which the Council grants partial access.

It should be noted in this connection that a single web page has been created within the European Union portal on the Europa Internet site (<http://europa.eu.int>), enabling citizens to access the registers of the various EU institutions and bodies. In order to increase the visibility of the public registers of documents of the European institutions, a link has been created on the Council's homepage (<http://ue.eu.int/fr/summ.htm>) under the heading "Transparency", to draw the attention of users of the Council Internet site to this single portal.

The portal allows interested parties not only to access the registers of EU institutions and bodies, but also to follow the decision-making process within institutions and at interinstitutional level by clicking on Oeil (Legislative Observatory) or on Pre-Lex (monitoring interinstitutional procedures).

Finally, it is possible to follow the progress of dossiers subject to the codecision procedure (i.e. the procedure for legislative acts adopted jointly by the European Parliament and the Council) via a link on the Council's homepage (<http://ue.eu.int/codec/fr/index.htm>). This link enables interested parties to access a database which is updated daily by the Codecision Legislative Procedures Unit. The Council documents mentioned in the database are also listed in the public register of documents, and users of the Codecision database need only click on the number of a Council document referred to in the database in order to find the document in question in the Council's public register.

4) *Internal instructions, training sessions, staff*

In January 2003 a transparency guide was drawn up for delegates and for staff of the General Secretariat of the Council, with a significant section dealing with public access to documents. The aim of this internal guide is to set out the principles and instruments that apply as regards access to documents, and to provide practical information on procedures for the implementation of these instruments. In January 2004 the "Transparency – access to Council documents" unit produced a new version of the guide, with the addition in particular of a summary of the relevant case-law.

As well as the training sessions organised to make Council officials responsible for the production of documents more familiar with Council policy and practice in the field of public access to documents, similar training sessions were also given to national officials from the acceding States and candidate countries.

In 2003 the "Transparency, access to documents, information to the public" Unit (DG F) of the General Secretariat of the Council had 14 members of staff, distributed as follows:

Access to documents:	1 A, 1 LA, 2 Bs, 4 Cs et 1 D
Legislative transparency:	1 B et 1 C
Information to the public:	3 Cs

II. ANALYSIS OF REQUESTS FOR ACCESS

Requests from the public for access to Council documents are processed in the initial phase by the General Secretariat of the Council. In the event of a total or partial refusal of access by the General Secretariat of the Council to a document, the applicant may submit a confirmatory application asking the institution to reconsider its position. In the event of a total or partial refusal of a confirmatory application, the applicant may lodge a complaint with the European Ombudsman and/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 two full years following the entry into force of Regulation No 1049/2001.

During the reference period, 12 595 documents were requested from the Council, following 2 831 requests for access received from the public. Compared with the previous year, the number of requests rose by 18,4% (from 2 391 in 2002 to 2 831 in 2003), while the number of documents requested increased by 34,7% (from 9 349 in 2002 to 12 595 in 2003).

It should be noted that the number of documents disclosed in full or partially (following initial or confirmatory applications) also rose in 2003 compared with 2002 (from 8 246 in 2002 to 11 005 in 2003, a 33,4% increase). The number of documents disclosed in full in 2003 increased by 27,1% compared with 2002 (from 7 089 in 2002 to 9 014 in 2003). The number of documents partially disclosed in 2003 rose even more sharply (by 80,5% from 1 068 in 2002 to 1 928 in 2003).

As shown by the statistics on consultation of the public register of Council documents via the Internet, it has become an important research tool for citizens wishing to following the activities of the European Union closely. The increase in the number of documents requested bears on this impression, since applications for access concern almost exclusively documents referred to in the register which are not directly accessible on circulation within the Council. It has thus been possible to release a large number of the documents requested, if not in full then at least partially, after examination by the relevant departments of the General Secretariat of the Council. This applies in particular to documents dealing with questions still under discussion by the Council when they are entered in the register and, accordingly, not made automatically accessible to the public on circulation ⁸.

Professional and geographical distribution of applicants

As far as initial applications are concerned, applicants are principally students and researchers (23,9%). Lawyers (12,8%), the industrial and commercial sector (10,7%) and pressure groups (10,7%) are also among the best represented social and professional categories. Applicants are not required to give their identity or the reasons for their application, usually sent via email, so the profession of a significant percentage (17,2%) of applicants is unknown. In the case of confirmatory applications, most applicants are also students or researchers (34,2%).

Journalists account for only 5,3% of applicants at the confirmatory stage, since the public registers of documents are only one of several possible sources of information for journalists. Moreover, the great majority of journalists are more interested in day-to-day events. It is therefore not surprising that the small number of applications for access from journalists are in the main from the field of investigative journalism and are hence similar to applications from academics.

⁸ Under Article 11(6) of Annex II of the Council's Rules of Procedure, documents which are temporarily covered by the provisions of the first subparagraph of Article 4(3) of Regulation No 1049/2001 (protection of the Council's decision-making process) are disclosed in full once the negotiations to which they relate have been completed. While the negotiations are taking place, the Council generally grants only partial access, particularly if the documents in question reflect the individual positions of delegations. This practice makes it possible to protect the Council's decision-making process and to supply interested parties with documents on topical questions, thereby giving them the possibility of following proceedings.

As regards the geographical distribution of applicants, the majority of initial applications come from Belgium (24,6%), Germany (14,2%) and the United Kingdom (9,4%). Applications originating from third countries (outside the EU) represent 5,3% of the total. Confirmatory applications come mainly from the following four countries: the Netherlands (28,9%), Belgium (26,3%), the United Kingdom (18,4%) and Germany (15,8%)⁹.

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

Fields covered by applications

As regards the fields covered by the applications, there is still a marked interest in Justice and Home Affairs (22%), although the figure has fallen in relation to previous years¹⁰. Then, in descending order, applications are made for documents on the internal market (16,3%), external relations and CFSP (9,1%), economic and monetary policy (9%) and the environment (5,2%).

The interest of applicants in the internal market (16,3% of applications in 2003, as against 14,7% in 2002), CFSP (9,1% in 2003 as against 8,6% in 2002) and economic and monetary policy (9% in 2003, as against 10,7% in 2002) remains relatively stable, whereas the percentage of applications concerning the environment has fallen with respect to the previous year (5,2% in 2003 as against 7,9% in 2002). The number of applications concerning the internal market has risen steadily since 1999¹¹.

⁹ In 2002 most of the initial applications came from the three countries referred to above, i.e. Belgium (27,5%), Germany (13%) and the United Kingdom (9,8%), whereas the confirmatory applications came mainly from the United Kingdom (40,9%).

¹⁰ In 1999 Justice and Home Affairs accounted for 37% of applications for access; the percentage fell to 29% in 2000, 29,5% in 2001 and 24,4% in 2002.

¹¹ In 1999, the year in which the public register of Council documents was set up, only 6% of applications for access concerned the internal market. Since then, the percentage has risen to 10% in 2000, 14,5% in 2001, 14,7% in 2002 and 16,3% in 2003.

Number of documents examined and refusals of access

During the reference period, the General Secretariat examined 12 595 documents and made 10 942 of them available in the initial phase (reply supplied by the General Secretariat on behalf of the Council). 45 confirmatory applications were made in relation to 161 documents, as a result of which the Council decided to release an additional 63 documents (22 in full and 41 partially).

Of the 12 595 documents requested during the reference period, 1 590 were refused (initial and confirmatory phases taken together), giving an access percentage of 71,7% (documents requested and disclosed in full) or 87,4 % if documents approved for partial access are taken into account.

While the level of access to Council documents in 2003 remained stable with respect to 2002 (87,4% in 2003 as against 88,6% in 2002), these figures must be viewed in conjunction with the rise in the number of documents requested (up 34,7%) and the number of documents released (up 33,4%) in relation to the previous year, and the increasing number of documents made available directly via the register on circulation ¹².

¹² Note in this connection that applications for access relate almost exclusively to documents which are listed, but not directly accessible via the register. In fewer than 2% of cases logged, documents previously made public as a result of applications relating to other documents were included in the Council statistics (for purely technical reasons).

III. APPLICATION OF EXCEPTIONS TO THE RIGHT OF ACCESS

Grounds for refusal

With initial applications, the grounds for refusal most often invoked are the protection of the decision-making process, which accounts for nearly a third of refusals (31,2%), followed by the protection of the public interest as regards international relations (28,7%), the protection of the public interest as regards public security (16%) and the protection of legal advice (10,9%). In 8,4% of cases, several grounds for refusal were invoked: thus, protection of the decision-making process is often given in conjunction with protection of the public interest as regards international relations (7,9%) or (to a lesser extent) the financial, monetary or economic policy of the Community or a Member State (0,5%) or public security (0,4%).

With regard to confirmatory applications, it should be noted that protection of the public interest as regards international relations was invoked as grounds for 61,6% of refusals in 2003 whereas these grounds had been invoked in only 7,3% of cases in 2002. Protection of the decision-making process was invoked in 14,2% of cases on 2003 as against 38,2% of refusals in 2002. Finally, it should be noted that in 4% of refusals the latter grounds were given in conjunction with other grounds for refusal, such as protection of the public interest as regards the financial, monetary or economic policy of the Community or a Member State (2% of cases), public security (1% of cases) or the protection of court proceedings and legal advice (1% of cases).

Application by the institutions of exceptions to Regulation 1049/2001

In a report dated 30 January 2004 on the implementation of the principles in Regulation No 1049/2001 the European Commission submitted a table giving a breakdown of the grounds invoked in 2002 by the European Parliament, the Council and the Commission in their refusals of initial applications¹³. It shows that only the Council invoked protection of the public interest as regards international relations (24,6% of refusals) and public security (invoked in 23,1% of cases) as the main reasons for refusal, while the main reasons invoked by the European Parliament for refusing initial applications were the protection of personal data and of court proceedings and legal advice (22,2% and 55,6% of refusals respectively). The Commission, for its part, mainly invoked the protection of the purpose of inspections, investigations and audits as grounds for refusal (in 35,9% of cases).

However, as the Commission stated in its report, these figures are for information only and therefore cannot form the basis of an objective comparison. In this connection the Commission stressed that the Council and the Commission figures refer almost entirely to applications for access to documents which are not yet in the public domain and which, if disclosed, could in many cases harm interests protected by the provisions of Regulation No 1049/2001. In contrast, the figures provided by the Parliament's Registry show all the applications for access officially sent to it, including applications for documents that are already accessible to the public.

As correctly stated by the Commission in its report, the frequency with which the three institutions invoked each exception as grounds for refusal indicated only the relative importance of those exceptions in comparison with all the negative decisions of the institution in question. Moreover, the apparent discrepancy in applying exceptions was more a reflection of the differences between the missions and activities of the institutions, not of a different interpretation of the provisions in the Regulation.

¹³ See COM(2004) 45 final, p. 16.

The main reason why the exceptions most frequently invoked by the Council in the initial phase are the protection of the public interest as regards international relations (representing 28,7% of refusals in 2003 against 24,6% in 2002) and public security (invoked in 16% of cases in 2003 and in 23,1% of cases in 2002) is the institution's specific role in the implementation of the common external and security policy and of cooperation in matters of Justice and Home Affairs.

The 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 10,9% of refusals in 2003 (and in 11,4% in 2002) and in 7,1% of refusals at the confirmatory stage in 2003 (as against 23,6% of negative decisions in 2002).

While this exception does not constitute the grounds for refusal most frequently invoked by the Council and while the Council interprets and applies it in a limited manner, as it does any other exception to the right of access, so as not to operate against the general principle of public access to the institution's documents, its importance for the proper functioning and effectiveness of the institution's work should nevertheless be stressed.

On the basis of case-law established over several years¹⁴, 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 further 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 available advice that is given totally independently¹⁵.

Restrictive interpretation of the concept of a document from a Member State considered as a third-party document

The Council has produced a restrictive interpretation of the concept of a "document originating from a Member State" which takes account of the fact that, when taking part in its discussions, representatives of the Member States are not persons or entities external to the Council as an institution but part of it. As a result, documents originating from Member States but produced in their capacity as Council members are to be regarded as Council documents. Consequently, documents drawn up by Member States in which they speak as Member States and not as Council members in the course of the Council's work are considered to be third-party documents. For that reason, the Council invoked the exception in Article 4(5) of Regulation No 1049/2001 (lack of prior agreement of the Member State which is the author of the document) as grounds for refusal in only one case in 2003.

¹⁴ 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.

¹⁵ Note here that the Court of First Instance currently has before it an action for annulment brought by Mr Maurizio Turco, challenging the legality of a Council decision refusing him, inter alia, access to certain parts of an opinion of the Council's Legal Service. This case (T-84/03), Maurizio Turco v. Council, is still pending. It should further be noted that the issue is also the subject of two complaints to the Ombudsman (1542/2000/PB and 1510/2002/PB) referred to in Part V of this report.

Special treatment of sensitive documents

In the aforementioned evaluation report, the European Commission considered that the fact that the concept of a "sensitive" document within the meaning of Article 9 of Regulation No 1049/2001 did not fully coincide with the classification system envisaged for documents under the Council and Commission's security rules¹⁶ constituted a "potential source" of inconsistencies and that "Logic dictates that all classified documents should be submitted to the same rules"¹⁷.

The Commission began by noting that the definition of a "sensitive" document set out in Article 9 of Regulation No 1049/2001 covered only documents which (1) were classified "EU CONFIDENTIAL", "EU SECRET" or "EU TOP SECRET", (2) concerned an area of public interest (public security, defence, international relations or financial, monetary or economic policy) referred to in Article 4(1) of the Regulation and (3) originated from a Community institution or agency, a Member State, a third country or an international organisation.

That definition therefore ruled out any classified document which did not concern an area of public interest referred to in Article 4(1) of Regulation No 1049/2001 and did not originate from a Community institution or agency, a Member State, a third country or an international organisation. Those documents were therefore not considered "sensitive" within the meaning of Article 9 of the Regulation, while the scope of the Council and Commission security rules covered all types of classified document.

However, while it is true that the definition of the concept of an "sensitive" document set out in Article 9(1) of Regulation No 1049/2001 is rather restrictive, it does not appear to be a "potential source" of inconsistencies, or to generate any particular problems in practice. In the report the Commission itself noted that "in practice (...) this divergence [between "sensitive" and "classified" documents] has not yet generated any specific problems."

¹⁶ Council Decision 2001/254 of 19 March 2001 adopting the Council's security regulations, OJ L 101, 11.4.2001, p. 1.
Commission Decision 2001/844 of 29 November 2001 amending its internal Rules of Procedure, OJ L 317, 3.12.2001, p. 1.

¹⁷ See the Commission report, COM(2004) 45 final, p. 19.

In its assessment of the application of the Council and Commission security rules, which were adopted without prejudice to instruments implementing the right of access to documents, the Commission pointed out that the security rules of the two institutions did not contain additional exceptions to right of access, but merely defined the treatment of classified documents¹⁸.

The Commission further reiterated in this connection that the potential harm caused by the disclosure of a classified document which was the subject of an application for access was examined in the same way as for any other document (whether classified or not). If it emerged that none of the exceptions applied at the time of examination, the document should be de-classified and disclosed. Thus there was no risk of documents being unavailable because of unfair classification.

In view of the above, it must be admitted that the fact that the definition of a "sensitive" document laid down in Regulation No 1049/2001 potentially refers to only some of the institutions' classified documents does not raise problems with regard to citizens' rights of access.

The divergence between "sensitive" and "classified" documents which could, according to the Commission, constitute a source of inconsistency or give rise to specific difficulties of interaction between the security rules in force and Regulation No 1049/2001 therefore has no practical impact on the implementation of Regulation No 1049/2001.

¹⁸ See the aforementioned Commission report, p. 19.

IV. KEY DEVELOPMENTS

1) Extending the application of Regulation (EC) No 1049/2001 to the Community agencies and bodies

Although Regulation No 1049/2001 covers only the institutions referred to in Article 255 of the EC Treaty which enshrines the principle of right of access to European Parliament, Council and Commission documents, the three institutions - in their joint declaration relating to Regulation No 1049/2001¹⁹ - clearly stated their intention to render the Regulation applicable to the agencies and similar bodies created by the Community legislator by making the necessary amendments to the acts establishing the existing agencies and bodies. By the same token, they undertook to include provisions relating to the right of access to documents in future proposals concerning the establishment of such agencies and bodies²⁰.

Following this joint declaration, regulations were adopted by the Council on 18 June 2003 and by the Council and European Parliament on 22 July 2003 amending all Regulations establishing the Community agencies and bodies, and making Regulation No 1049/2001 applicable to these agencies and bodies by inserting a specific provision on the principle of right of access to documents into the acts establishing them²¹. In accordance with these new regulations, the agencies and bodies concerned must adopt the procedures for implementing Regulation No 1049/2001 by 1 April 2004.

¹⁹ Declaration published in Official Journal L 173, 27.6.2001, p. 5.

²⁰ By way of example, see Article 18 of the Council Joint Action (2001/554/CFSP) of 20 July 2001 on the establishment of a European Union Institute for Security Studies (OJ L 200, 25.7.2001, p.1) and Article 19 of the Council Joint Action of 20 July 2001 (2001/555/CFSP) on the establishment of a European Union Satellite Centre (OJ L 200, 25.7.2001, p. 5).

²¹ See Regulations Nos 1641/2003 to 1655/2003, OJ L 245, 29.9.2003.

2) *The Interinstitutional Committee*

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 No 1049/2001.

The Committee held a meeting on 23 September 2003 in Strasbourg attended by Ms Cederschiöld, Vice-President of the European Parliament, Mr Antonione, President-in-Office of the Council of the European Union and Ms Loyola de Palacio, Vice-President of the European Commission. The Interinstitutional Committee meeting addressed the following matters in particular:

- preparation of the report evaluating the implementation of Regulation No 1049/2001 to be submitted by the Commission in January 2004 under Article 17(2) of the Regulation²²;
- outcome of the examination of whether the confidentiality clauses in acts of current Community law comply with the provisions of Regulation No 1049/2001²³;
- evaluation of the public hearing on the functioning of Regulation No 1049/2001 organised on 12 June 2003 in the European Parliament;
- interinstitutional cooperation on archives.

²² The above report from the Commission on the implementation of the principles in Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, COM (2004) 45 final.

²³ Examination provided for in Article 18(3) of Regulation No 1049/2001.

On the latter point, the Council submitted a set of proposals for stepping up cooperation between the institutions in the field of archiving and management of Community documentary materials, in particular by:

- formalising and strengthening the informal group for interinstitutional cooperation on archives;
- gradually harmonising filing systems and creating links between files held by the different institutions;
- organising joint training sessions for staff of the archives and documentation departments.

With regard to the Commission departments' analysis of whether provisions on access to documents in acts of current Community law comply with Regulation No 1049/2001, the confidentiality clauses listed can be divided into two categories:

- (1) certain rules should be regarded as special cases of application of one of the general exceptions laid down in Article 4 of the Regulation;
- (2) other clauses grant one party involved or with an interest in a specific procedure a right of access to documents which, if disclosed to the public, would harm one of the interests protected by the Regulation.

In both instances, the Commission saw no incompatibility with the provisions of the Regulation, a conclusion which practice to date has borne out²⁴.

In the course of its proceedings, the Interinstitutional Committee also discussed the European Parliament report on access to European Parliament, Council and Commission documents drawn up by Mr Cashman, Member of the European Parliament, on behalf of Parliament's Committee on Citizens' Freedoms and Rights, Justice and Home Affairs²⁵.

²⁴ See also the above report from the Commission, p. 28.

²⁵ See A5-0298/2003 final dated 11 September 2003 and the Resolution adopted by the European Parliament on 25 September 2003 on the basis of the report by Mr Cashman.

In the resolution contained in the report, the Parliament welcomes the institutions' efforts in the field of transparency and praises the work accomplished by the staff assigned to the task. The resolution also contains a number of recommendations, particularly with regard to the public registers of the institutions, the introduction of a common coding system for documents, particularly legislative documents, in order to facilitate searches, the requirement for institutions to examine the accessibility of documents on a case-by-case basis since any exclusion by category is contrary to the Regulation, as well as the need to establish a common methodology for the application of exceptions to the right of access.

3) *Pilot project on transparency in the JHA field*

In order to facilitate public access to documents of the institutions on a specific topic, in 2003 the European Parliament, the Council and the Commission agreed to conduct a feasibility study on a pilot project relating to the area of freedom, security and justice. The study was launched at the beginning of 2004 with the aim of defining a coordinated access method which should ultimately allow interested parties to consult files identifying or giving access to documents required on a given subject, irrespective of which institution holds the files.

4) *Interinstitutional booklet on access to documents available in electronic form*

An interinstitutional booklet entitled "*Access to the documents of the European Parliament, the Council and the Commission: Instructions*" is now available in electronic form and can also be consulted via the interinstitutional portal on the "Europa" website ("Documents" page). The booklet was drawn up in 2002 by the "Access to documents" departments of the three institutions in cooperation with the Office for Publications. It is designed to be a set of practical instructions to facilitate access to the documents of the three institutions, summarising the principles set out in the Regulation and describing how to submit an application for access.

V. COMPLAINTS LODGED WITH THE EUROPEAN OMBUDSMAN AND LEGAL ACTION

(A) COMPLAINTS LODGED WITH THE EUROPEAN OMBUDSMAN

The following section of this report refers to a number of complaints lodged with the European Ombudsman in cases where Regulation No 1049/2001 was applied. Of the six complaints already mentioned in the Council's annual report on 2002, below we examine three cases closed in 2003 on which the Ombudsman had not yet decided when the previous Council's annual report was published²⁶. This report also examines a fourth case (1641/2003/OV) (still in progress) on which the Council submitted its comments to the Ombudsman in December 2003.

Lastly, it is worth highlighting three cases opened at the end of 2003 on which the Council will submit its observations to the Ombudsman in the course of the first quarter of 2004 and which should therefore be examined in greater detail in the Council's annual report on 2004. The first case (2371/2003/GG) relates to the Council's refusal to give access to an Opinion of the Legal Service, while the second (2189/2003/ADB) concerns a report by the Extreme Fundamentalism and Terrorism Group, the disclosure of which could undermine the European Union's position in international negotiations on terrorism. The third complaint (2395/2003/GG) does not concern the right of access to documents in the strict sense, but rather the public nature of the Council's decision-making process in the broad sense of the term.

1. Complaint 1542/2000/PB of 25 November 2000

This complaint concerns the Council Decision of 19 September 2000 refusing the complainant access to two opinions of the Council's Legal Service, one regarding a judgment of the Court of First Instance and the other a Commission proposal relating to the Regulation on public access to documents of the European Parliament, the Council and the Commission. It is worth noting that the Council had dealt with the application for access to both documents on the basis of Article 4(2) (provision on protection of the public interest) of Decision 93/731/EC, which was in force until November 2001.

²⁶ See the Council's annual report on access to documents – 2002, pp. 18 to 22. The Ombudsman closed the files on complaints 917/2000/GG, 648/2002/IJH and 1795/2002/IJH on 17 December 2002, 28 January 2003 and 11 March 2003 respectively.

In his draft recommendation of 18 October 2001, the Ombudsman felt that the refusal of access to the opinion of the Legal Service regarding the Court of First Instance's judgment did not constitute maladministration. On the other hand, the Ombudsman considered that the second opinion concerned a question raised in the context of the legislative process and that the public should have access to it when the legislative process was completed.

In its detailed opinion of 19 March 2002, the Council upheld its refusal, taking Article 4(2) of Regulation No 1049/2001 (protection of legal advice) as a basis and invoking the lack of overriding public interest in disclosure of the document in question.

On 12 December 2002 the Ombudsman submitted a special report to the European Parliament urging it to adopt a resolution in accordance with his recommendation.

On 10 June 2003 the Ombudsman informed the European Parliament's Committee on Petitions that, subsequent to the special report, proceedings had been instituted before the Court of First Instance on the same matter as in the special report, namely the interpretation of Regulation No 1049/2001 concerning the opinions of the Legal Services of the institutions on legislative acts²⁷.

In the light of that information, the European Parliament's Committee on Petitions did not follow up the special report and the Ombudsman consequently decided to close the file on 21 July 2003.

²⁷ This refers to Case T-84/03, *Maurizio Turco v. Council*, mentioned in footnote 15.

2. *Complaint 573/2001/IJH of 19 April 2001*

The complaint concerns the refusal of access to the second annual report of the Code of Conduct Group (Business taxation). The Council refused access to this document under Article 4(2) of Decision 93/731 (protection of the confidentiality of the Council's proceedings), but the Council and the Ombudsman subsequently agreed to apply Regulation No 1049/2001.

In his draft recommendation of 17 June 2002, the Ombudsman asked the Council to give access to the document involved since the question could be considered to relate to the legislative activities of the Council. Moreover, he recommended that the Council take into consideration the argument of the complainant whereby it is in the public interest for companies to be able to obtain precise financial information, and that this overrides the protection of the decision-making process of the institution. On 14 October 2002 the Council issued a detailed opinion showing that the report in question contained the outcome of proceedings of a working party and would under no circumstances become a legislative act. The public interest did not outweigh the general interest in achieving progress in the negotiations on the abolition of harmful tax measures. The Council did, however, agree to give partial access to the document.

On 10 February 2003, the Ombudsman closed the case, concluding that the Council was entitled to hold that there was no higher interest to justify disclosure of the document in question overriding the protection of the institution's decision-making process, and that by granting partial access to the report, the Council had taken adequate steps to satisfy the draft recommendation.

3. *Complaint 1015/2002/PB of 29 May 2002*

The complaint covers three points: (1) failure by the Council to establish lists of all the committees and working parties of the European institutions in which the representatives of the Council and the Member States participate and the names of persons participating in these bodies; (2) failure by the Council to establish a list of the persons reimbursed for their travel expenses or having received a per diem allowance for meetings within the European institutions; (3) refusal by the Council to grant access to three opinions of the Legal Service.

In a preliminary statement of 1 October 2002, the Council pointed out, firstly, that since Regulation No 1049/2001 covered existing documents only it could not therefore give access to a list which did not exist and which would be of no use to the General Secretariat on an administrative level and, secondly, that the list of persons reimbursed did not exist and reimbursements were given on the basis of actual expenses, with the Court of Auditors carrying out regular checks in this area. As regards the documents containing the opinions of the Legal Service, partial access could be given to two of the three opinions in question.

By decision dated 27 March 2003, the Ombudsman addressed a draft recommendation to the Council concerning exclusively the Council's refusal to give full access to the opinions of its Legal Service. Referring to the recommendation made in his special report on the abovementioned complaint 1542/2000/PB, the Ombudsman considered that the three legal opinions all concerned questions raised in the framework of the legislative process and that they should become available to the public when the legislative process had reached a conclusion.

In its detailed opinion of 27 May 2003, the Council said that in view of the case currently before the Court of First Instance (Case T-84/03, *Maurizio Turco v. Council*), it was not appropriate for it to comment on the substance of the draft recommendation at this stage.

On 17 September 2003, the Ombudsman closed the case without finding any maladministration as regards the complainant's first two allegations. As regards the third allegation, he referred to the position taken by the Ombudsman in the special report submitted to the European Parliament on 12 December 2000 in case 1542/2000/PB on which, in view of the current legal proceedings, the Committee on Petitions of the European Parliament took no action. Against this background, the Ombudsman considered that it would not be appropriate to make a further special report on the same question and that no further inquiries in the present case were therefore justified.

4. *Complaint 1641/2003/OV of 2 September 2003*

In this case the complainant contended that the Council had not provided the full text of a document concerning an amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, and asked the Council

- to give her access to the entire content of the document

and/or

- to give her a detailed reasoning for the refusal on the basis of Article 4(3) of Regulation No 1049/2001, as regards the balance between the public interest justifying disclosure of the document concerned and the general interest of protecting the decision-making process.

In its letter of 22 December 2003 to the Ombudsman, the Council replied in substance that:

- given the delicate and contentious issues under consideration in the document concerned, disclosure of the entire document at this stage would be premature as it could deprive delegations of the necessary flexibility to alter their positions in the light of the ongoing discussions. This would affect the progress of the negotiations and compromise overall agreement on an important legislative text;

- disclosure of the document, including the views expressed by delegations during the discussions, excluding parts which would allow delegations to be identified, was intended precisely to make as much information as possible on the progress of the negotiations accessible to the public while not impairing the Council's ability to reach compromises on politically sensitive issues;
- the Council generally releases as much information as possible in the context of Regulation No 1049/2001; as provided for in Article 11 of Annex II to its Rules of Procedure, the Council routinely releases most documents relating to negotiations on a specific topic once the legislative process has finished.

As stated above, this case is still in progress.

(B) LEGAL ACTION

Rulings given in 2003 under the rules on access to documents

In 2003, four cases concerning access to documents of the institutions resulted in rulings by the Court of First Instance or the Court of Justice, only one of which concerned the Council, namely *Pitsiorlas v. Council and ECB* (C-193/01 P)²⁸.

It should be noted that in January 2000 the applicant in that case brought proceedings before the Court of First Instance for annulment of the Council's decision of 30 July 1999 and the European Central Bank's decision of 8 November 1999 refusing access to a document concerning the Basle/Nyborg Agreement on the reinforcement of the European Monetary System. In February 2001, the Court of First Instance dismissed the application as inadmissible insofar as it referred to the Council decision of 30 July 1999²⁹. The applicant then brought an appeal against the Order of the Court of First Instance before the Court of Justice.

²⁸ ECR 2003, p. I-4837.

²⁹ Case *Pitsiorlas v. Council and ECB* (T-3/00), ECR 2001, p. II-717.

In its judgment of 15 May 2003, the Court of Justice set aside that order and referred the case back to the Court of First Instance for judgment on the substance. At this stage the proceedings are still pending before the Court of First Instance.

New appeals against Council decisions to refuse access

A total of four appeals were lodged in 2003 against Council decisions refusing access on the basis of Regulation No 1049/2001.

Firstly, in the case *Maurizio TURCO v. Council* (T-84/03) mentioned several times in this report, the applicant contests the Council's refusal to disclose the identity of delegations whose positions and/or reservations are recorded in legislative documents, which, in his opinion, constitutes a violation of the requirement to construe and apply Article 4(3) of Regulation No 1049/2004 strictly³⁰, and the legality of the Council's refusal to grant him access to certain parts of an opinion of the Legal Service.

There are also the joint cases *José Maria SISON v. Council* (T-110/03 and T-150/03) both of which seek annulment of Council decisions refusing access to documents on combating terrorism. In both instances, the applicant based his appeal on the grounds of infringement of the general principle of transparency and infringement of the duty to state reasons. Lastly, there is case T-405/03 between the same parties, in which the facts are practically identical, and the legal arguments similar to those put forward in the abovementioned two cases.

³⁰ This part of the appeal is redundant as the legislative documents were published in full in May 2003.

VI. CONCLUSIONS

The Council's experience in connection with the implementation of Regulation No 1049/2001 in 2003 has shown that application of the Regulation's provisions causes no particular problems either with regard to the analysis of documents for which access is requested or with regard to compliance with the response times laid down by the Regulation.

By means of various practical adaptations and efforts at administrative level, the General Secretariat of the Council has managed to cope with the growing administrative burden resulting from the considerable increase in the number of documents requested, while meeting the response times laid down in the Regulation. For initial requests, processing time was on average only seven working days.

It should be emphasised that the increase in the number of documents to be scrutinised by the Council following applications for access involves an additional burden of work not only for the Council staff called upon to process requests on receipt, but also for the officials of the various departments producing the documents concerned, who in many cases must themselves examine the requested documents under Regulation No 1049/2001.

Concerning the apparent lack of uniformity (referred to in the Part III of this report) in the application of exceptions to the right of access by the European Parliament, the Council and the Commission, it needs to be stressed yet again that this is the result more of differences in the respective roles of the three institutions and in the tasks assigned to them by the Treaties, and not of a differing interpretation of the provisions of the Regulation.

As for the application of the exceptions to the right of access listed in Article 4 of Regulation No 1049/2001, it should be noted that the question of interpretation of the provision in Article 4(2) concerning protection of the legal opinions of the institutions has been raised in proceedings before the Court of First Instance³¹. This question is therefore at present in abeyance.

³¹ See explanatory details re the case *Maurizio Turco v. Council* (T-83/03) in Parts III and V of this report.

As stated in Part I of this report, the figures on the use by the public of the register of Council documents show clearly that the register is now a research tool appreciated by citizens wishing to keep a close watch on Community affairs.

It should be noted in this connection that the applications for access relate almost exclusively to documents which are referred to in the register but are not directly accessible to the public upon circulation to the Council. Given that very many such documents, notably legislative dossiers, are published in full when the negotiations concerning them have been concluded, it is not surprising that citizens wishing to follow the decision-taking process closely should submit their applications while the negotiations are in progress.

The Council practice of granting partial access to documents concerning matters which are still under negotiation is specifically intended to give the public as much information as possible on the course of current discussions without detriment to the Council's decision-taking process. It may be added here that any new document for which the Council grants partial access may now be consulted on line.

Although the rate of access to Council documents in 2003 remains steady in comparison to 2002 (87,4% in 2003 as against 88,6% in 2002), the overall situation for the past year is very positive, given that during the reference period the number of documents released by the Council following applications for access was still rising (both in absolute and relative terms: + 33,4%) compared with the previous year.

Analysis of requests for access and the data available on public use of the register of Council documents therefore seem to show that the aims set by the Treaties and by Regulation No 1049/2001 have been achieved.

STATISTICS ON PUBLIC ACCESS TO COUNCIL DOCUMENTS**1. Number of applications pursuant to Regulation No 1049/2001**

2002	2003
2.391	2.831

2. Number of documents concerned by initial applications

2002	2003
9.349	12.595

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

2002	2003
8.157 ⁽¹⁾	10.942 ⁽²⁾⁽³⁾

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

2002	2003
43	45

5. Documents released by the Council following confirmatory applications

2002	2003
89 ⁽⁴⁾	63 ⁽⁵⁾⁽⁶⁾

6. Rate of document released for the procedure as a whole⁽⁷⁾

2002		2003	
76,4%	88,6%	71,7%	87,4%

-
- (1) 7.089 documents released wholly, 1.068 documents released partially.
(2) Based on 12.595 documents considered (including 1,9% public documents).
(3) 9.014 documents released wholly, 1.928 documents released partially.
(4) 24 documents released wholly, 65 released partially.
(5) Based on 161 documents considered.
(6) 22 documents released wholly, 41 documents partially.
(7) Based on documents released wholly (left column) or wholly + partially (right column).

7. Professional profile of applicants

		2002		2003	
Civil society (Environmental lobbies, other lobbies, Industry/commercial sector, NGOs, etc.)		27%		21,3%	
Journalists		2%		2,1%	
Lawyers		10,8%		12,8%	
Academic world	University Research	23,5%	26,1%	23,9%	26,4%
	Library	2,6%		2,4%	
Public authorities (non-EU institutions, third-country representatives, etc.)		4,9%		8,4%	
Members of the European Parliament and their assistants		2,5%		2,4%	
Others		5,7%		9,4%	
Undeclared professional origin		21%		17,2%	

8. Geographical spread of applicants

	2002	2003
Belgium	27,5%	24,6%
Denmark	2%	1,7%
Germany	13%	14,2%
Greece	1,2%	0,9%
Spain	6,4%	6,3%
France	7,1%	6%
Ireland	1,3%	1,1%
Italy	4,6%	5,2%
Luxembourg	0,9%	2%
Netherlands	4,7%	4,8%
Austria	1,9%	2%
Portugal	1,8%	1,5%
Finland	0,6%	0,8%
Sweden	2%	1,4%
United Kingdom	9,8%	9,4%
Cyprus	0%	0,3%
Czech Republic	0,1%	0,5%
Estonia	0%	0,1%
Latvia	0%	0,1%
Lithuania	0,1%	0,3%
Hungary	0%	0,8%
Malta	0%	0,2%
Poland	0,1%	1,5%
Slovakia	0%	0%
Slovenia	0%	0,5%
Candidate countries (Bulgaria, Romania, Turkey)	0%	0,2%
Third countries (United States, Norway, Switzerland, Japan, Russia, etc.)	6,4%	5,3%
Non-specified	8,5%	8,3%

9. Sector ⁽¹⁾

	2002	2003
Legal questions	2%	1,6%
Agriculture, Fisheries	4,6%	4,7%
Internal Market	14,7%	16,3%
External Relations – CFSP	8,6%	9,1%
Functioning of the institutions	1,6%	1,2%
Economic and Monetary Policy	10,7%	9%
Justice and Home Affairs	24,4%	22%
Environment	7,9%	5,2%
Social Policy	3,3%	3,5%
Transport	5,1%	4,4%
General policy questions	1,6%	1,2%
Health and Consumer Protection	2,4%	4%

⁽¹⁾ Certain applications refer to more than one area.

9. Sector (continued)

		2002	2003
Transparency		0,9%	0,8%
Others	Research	0,4%	0,1%
	Culture	0,8%	0,5%
	Education/Youth	0,9%	0,8%
	Industry	1,8%	0,5%
	Regional Policy and Economic/Social Cohesion	0,3%	0,1%
	Energy	2,9%	2,9%
	Civil Protection	0,4%	0%
	Development assistance	0,4%	0,2%
	Financing of the Union (Budget, Staff Regulations)	0,9%	1%
	Others	1,2%	0,4%
	Enlargement	2,2%	2,4%
	Tax Questions – Fiscalité	0%	6%
	Defence and military matters	0%	0,7%
	Parliamentary Questions	0%	1,1%
Competitiveness	0%	0,3%	
		12,2%	17%

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

	2002	2003
Protection of public interest as regards public security	23,1%	16%
Protection of public interest as regards defence and military matters	0,1%	3,8%
Protection of public interest as regards international relations	24,6%	28,7%
Protection of public interest as regards the financial, monetary or economic policy of the Community or a Member State	0,7%	0,7%
Protection of privacy and the integrity of the individual (protection of personal data)	0,2%	0,3%
Protection of commercial interests of a natural or legal person, including intellectual property	0%	0%
Protection of court proceedings and legal advice	11,4%	10,9%
Protection of the purpose of inspections, investigations and audits	0%	0%
Protection of the institution's decision-making process	28,1%	31,2%
Several reasons together or other reasons	11,3%	8,4%
Not a Council document / other author	0,5%	0%

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

	2002	2003
Protection of public interest as regards public security	5,4%	4%
Protection of public interest as regards defence and military matters	0%	2%
Protection of public interest as regards international relations	7,3%	61,6%
Protection of public interest as regards the financial, monetary or economic policy of the Community or a Member State	0%	7,1%
Protection of privacy and the integrity of the individual (protection of personal data)	0%	0%
Protection of commercial interests of a natural or legal person, including intellectual property	0%	0%
Protection of court proceedings and legal advice	23,6%	7,1%
Protection of the purpose of inspections, investigations and audits	0%	0%
Protection of the institution's decision-making process	38,2%	14,2%
Several reasons together or other reasons	25,5%	4%
Not a Council document / other author	0%	0%

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

	2002	2003
Initial	10	7
Confirmatory	24	23
Ombudsman	63	54

13. Number of applications with prolonged deadline

	2002	2003
Initial	148 of 2395, being 6,2% of the applications	134 of 2835, being 4,7% of the applications
Confirmatory ⁽²⁾	29 [of 43]	37 [of 45]

⁽²⁾ Confirmatory applications are examined by the Council's Working Party on Information and official replies are approved by Coreper (Part II) and Council.

