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GENERAL SECRETARIAT DGF

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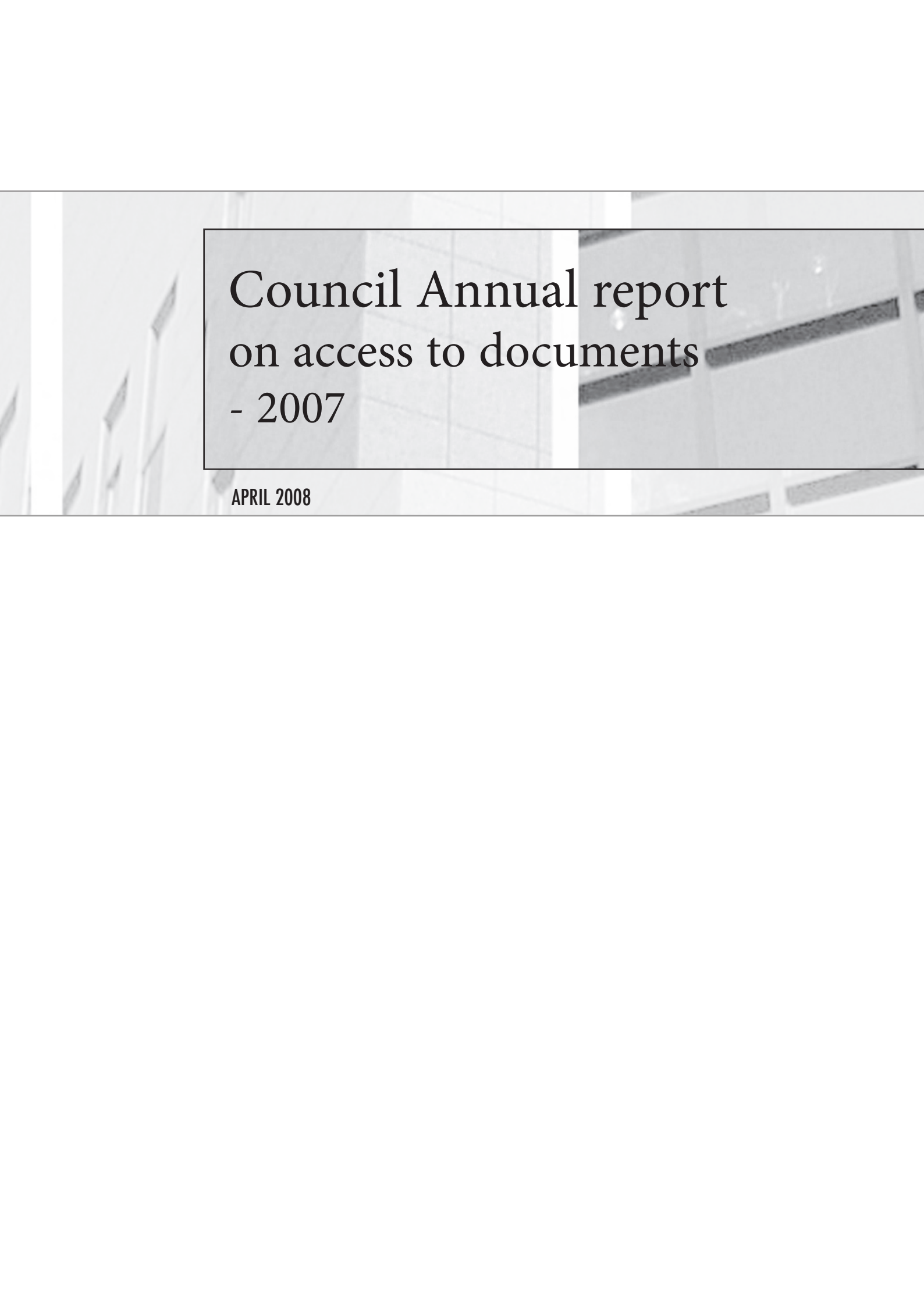
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# Council Annual report on access to documents - 2007



APRIL 2008



Council Annual report  
on access to documents  
- 2007

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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 2007.

The report, adopted by the Council in April 2008, 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 sixth year of implementation of the Regulation and reviews complaints submitted to the European Ombudsman as well as rulings given by the Community Courts in 2007 under Regulation (EC) No 1049/2001 in cases concerning 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://www.consilium.europa.eu>, under "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 2007.

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 2007 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 sixth 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, 13354/1/06 REV 1 and 8184/07) and the Commission (COM(2003) 216 final, COM(2004) 347 final, COM(2005) 348 final, COM(2007) 548 final and COM(2007) 841 final). For the European Parliament's reports on the years 2002-2006, 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.), 22 March 2006 (PE 371.089/BUR./ANN.) and 23 April 2007 (PE 388.097/BUR). 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 documents 7957/03, 8036/04, 8896/05, 13354/1/06 REV 1 and 8184/07.



## 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;

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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 2007, 108 343 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, OJ 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 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;
- 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 2007, the register listed 1 010 217 documents (all languages taken together), of which 724 338 (71,7 % of those registered) were public, i.e. either available in downloadable format (700 449 documents in PDF or HTML format) or on request (23 889 documents in other formats). This represented an increase of 19 % on the number of documents appearing in the register in 2006 (849 117 at the end of December 2006 against 1 010 217 at the end of 2007) and an increase of 20 % in the number of documents directly accessible via the register (583 905 by the end of 2006 against 700 449 at the end of 2007).

Moreover, as of 31 December 2007 the register contained 16 927 documents bearing the code "P/A" (i.e. partially accessible), including 2 637 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 2007, 465 612 different users logged on to the Council's public document register (as against 380 349 in 2006), representing an increase of 22,4 % in the number of users in one year. The total number of visits increased by 21 % (2 078 602 visits in 2007 against 1 722 354 in 2006), representing more than 5 700 visits per day. Consultations (in terms of number of screens viewed) totalled 9 212 745.

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

350 (original language) sensitive documents were produced in the period concerned, 26 classified as "SECRET UE" and 324 as "CONFIDENTIEL UE". Of these, 3 "SECRET UE" document and 61 "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.

The processing of applications for access to classified documents requires thorough investigation by the relevant departments of the General Secretariat of the Council. In 2007 the Transparency Department examined a total of 811 classified documents including 9 classified as "CONFIDENTIEL UE" and 802 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 2007 the average time for processing initial applications was 13 working days. The Council Secretariat extended the time-limit in 19,7 % 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.

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<sup>8</sup> The documents in question concerned notably the areas of ESDP (35,3 %), CFSP (28 %) and Justice and Home Affairs (25,5 %).

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.

### 3. *Legislative Transparency*

In addition to the documents which are made accessible via the register following a request for access under Regulation 1049/2001, a considerable number of legislative documents are made public each year, pursuant to Article 11(6) of Annex II to the Council's Rules of Procedure<sup>9</sup>. This provision prescribes that, unless one or more of the provisions of Article 4 Regulation 1049/2001 are applicable, all preparatory documents relating to a legislative act shall be made available to the public in full after the final adoption of the act<sup>10</sup>.

Parallel to this, the General Secretariat of the Council prepares a monthly summary listing *inter alia* all legislative acts, which have been adopted by the Council during a given month. The summary also includes information on the results of votes, the voting rule applicable as well as statements concerning the legislative acts which have been entered into the minutes of the Council<sup>11</sup>.

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<sup>9</sup> It should be recalled in this context that, pursuant to Article 255(3) of the EC Treaty, the Council as well as the Commission and the European Parliament shall elaborate, in their respective rules of procedure, specific provisions regarding access to documents. In the case of the Council, these specific provisions are set out in Annex II to the Rules of Procedure.

It moreover follows from Article 207(3) of the EC Treaty concerning the implementation of Article 255(3) that the Council shall provide for greater access to its documents when it is acting in its *legislative capacity*. The same principle, applicable to the three institutions directly involved in the legislative process, is set out in Article 12(2) of Regulation 1049/2001.

<sup>10</sup> During the last three years, an average of 580 preparatory documents were made public each year, pursuant to Article 11(6) of Annex II to the Council's Rules of Procedure.

<sup>11</sup> The monthly summary can be consulted on the Council's website <http://www.consilium.europa.eu> under the heading "Documents" – "Summary of Council acts".

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

As in previous years, in 2007 the Council Secretariat ran a series of training sessions<sup>12</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 2007, the "Transparency, access to documents and information to the public" Unit of the General Secretariat of the Council (DG F) had a staff of 19, allocated as follows:

Access to documents:	5 AD and 8 AST staff
Information to the public:	6 AST staff.

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>13</sup>. In 2007, the service dealt with 8 322 requests for information from the public, of which 7 252 were forwarded by e-mail and 1 070 were sent by letter.

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<sup>12</sup> In all, three training sessions were organised during the reference period (in February, May and September 2007); in addition specific briefing meetings were held in June and October 2007 between Transparency Department staff, members of the GSC's various departments concerned and members of the Council's preparatory bodies.

<sup>13</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.

## **II. ANALYSIS OF APPLICATIONS 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 last five years (2003-2007).

During the reference period the Council received 1 964 requests from the public for access to a total of 7 809 documents. The number of documents disclosed in full or in part (following initial or confirmatory applications) totalled 6 138 in 2007.

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 an 21 % increase in the number of visits (a number which has risen for five years in succession).

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

Initial applications came mainly from students and researchers (40 %). Lawyers (8,8 %), industry and commerce and pressure groups (14,2 %) 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 (13,2 %) of them is unknown. Most confirmatory applications also originated from students and researchers (56,2 %).

While 18,7 % of the confirmatory requests for access in 2007 were submitted by journalists, this category of applicants only accounted for 2,9 % of the requests at the initial stage. This is mainly due to the fact that the institutions' public document registers represent only one of several possible sources of information for the press. 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 thus similar to applications from academics.

As regards the geographical distribution of applicants, the majority of initial applications came from Belgium (26,4 %), Germany (16 %) and the United Kingdom (9,5 %). Applications originating from non-EU countries represented 8 % of the total. Confirmatory applications came mainly from Belgium (37,5 %) and the United Kingdom (25 %)<sup>14</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 (26,7 %)<sup>15</sup>. This was followed, in descending order, by applications for documents on external relations and the CFSP (18,1 %), the environment (8,2 %), agriculture and fisheries (6,8 %) and defence and military matters (6 %).

Applicants' interest in justice and home affairs (26,7 % of applications in 2007 as against 24,5 % in 2006) remained fairly steady, whereas applications concerning the CFSP (18,1 % in 2007 as against 14,3 % in 2006) and the ESDP (6 % in 2007 as against 2,4 % in 2006) increased remarkably<sup>16</sup>.

It should, however, be noted that while applications relating to "conventional" legislative documents concerning, for example, the internal market, dropped again, down to 2,9 % in 2007 (as against 16,3 % in 2003 and 14,2 % in 2004), that is not necessarily indicative of a lack of interest in that field on the part of the public but is rather due to the fact that a considerable number of legislative documents are made accessible through the public register of Council documents as soon as they are circulated. In 2007 a total of 108 343 documents (i.e. 67,2 % of the 161 121 produced and listed in the register during the year) were thus circulated as public documents.

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<sup>14</sup> In 2006, most confirmatory applications came from the United Kingdom (22,9 %) Germany (22,8 %) and Belgium (17,1 %).

<sup>15</sup> This figure has been increasing steadily over the last three years, from 20,1 % in 2004 to 22,5 % in 2005 and 24,5 % in 2006, reaching 26,8 % in 2007.

<sup>16</sup> Of the documents disclosed in full following application for access, 24,8 % related to justice and home affairs, 18,6 % to the CFSP and 10,5 % to the ESDP. Of the total number of documents disclosed (in full or in part), 26,4 % concerned justice and home affairs, 18,4 % the CFSP and 9,6 % the ESDP.

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

During the reference period, the General Secretariat examined 7 809 documents, 6 123 of which were made available in the initial stage (reply supplied by the General Secretariat on behalf of the Council). 18 confirmatory applications were made in respect of 30 documents, as a result of which the Council decided to disclose an additional 15 documents (6 in full and 9 in part).

Of the 7 809 documents examined during the reference period, 1 671 were therefore refused (initial and confirmatory applications combined), which is an access rate of 66,7 % (documents requested and fully disclosed) or 78,9 % if documents to which partial access was granted are also taken into account.



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

#### **Grounds for refusal**

With regard to the initial applications, the grounds for refusal most frequently invoked were the protection of the decision-making process, which accounted for nearly two fifths of all refusals (38 %), followed by the protection of the public interest as regards international relations (15,1 %), public security (13,3 %), and defence and military matters (2,3 %). In 30,2 % of cases several grounds for refusal were invoked: thus protection of the public interest as regards public security was often given in conjunction with protection of the public interest as regards international relations (20,4 %), while the protection of the decision-making process of the institution was regularly mentioned together with the protection of the public interest as regards international relations, including negotiations on trade, enlargement, etc. (5,4 %).

As for the confirmatory applications, protection of the public interest as regards international relations was invoked as grounds for 20 % of the refusals in 2007 (14 % in 2006), while the protection of the public interest as regards public security was invoked in 6,7 % of cases (37,2 % in 2006). In 33,3 % of the cases, several different reasons for refusals were given, such as protection of the public interest as regards public security in conjunction with protection of the public interest as regards international relations.

#### **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 0,8 % of refusals in 2007 (2 % in 2006). It was not invoked at all at the confirmatory stage during the period under consideration, whereas it had been the grounds for 4,6 % of refusals in 2006.

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 emphasised<sup>17</sup>.

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<sup>17</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>18</sup>, and confirmed in 2004 by the Court of First Instance in its judgment in the Turco case<sup>19</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 impartial legal advice.

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<sup>18</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>19</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. *Commission Green Paper on public access to documents*

When the Commission's decided, in November 2005, to launch the so-called "European Transparency Initiative", it included a review of Regulation 1049/2001 as one of a series of measures aiming at further increasing openness and transparency at the European level.

Following this decision, the Commission published, on 18 April 2007, a Green Paper on public access to documents<sup>20</sup>, in which it took stock of the existing rules governing the public right of access to documents and their implementation, while taking due account of the case-law established by the Court of First Instance as regards Regulation 1049/2001.

In the Green Paper, the Commission set out some options for improving the legislation, notably as regards transparency in the legislative process, harmonisation of the rules on access to documents with the rules on access to environmental information and the establishment of guidelines which will enable the institutions to more easily strike the balance between the principle of transparency and the protection of personal data and/or between transparency and the protection of commercial and economic interests. In addition, the Commission pointed to a number of practical measures aimed at offering members of the public better access to the documents of the EU institutions.

The publication of the Green Paper moreover marked the launching of a public consultation on the review of Regulation 1049/2001. For that purpose, the second part of the Green Paper contained a questionnaire, through which the Commission sought the views on the public on the regime for obtaining access to documents of the European institutions and invited citizens, including civil society organisations, economic operators, public authorities and other organisations with an interest in European affairs to react to the different options set out in the Green Paper.

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<sup>20</sup> COM(2007) 185 of 18 April 2007, Green Paper: Public Access to Documents held by institutions of the European Community – A review.

## 2. *Public Consultation on the Review of Regulation (EC) No 1049/2001*

During the consultation period, which lasted until 31 July 2007, the Commission received a total of eighty-one contributions to the Green Paper, from civil society (30), public authorities (25), the corporate world (14), and individual citizens (12). The outcome of the consultation was subsequently summarised in a Commission staff working document published in January 2008<sup>21</sup>, which *inter alia* contained the following findings:

- The vast majority of the respondents would prefer the public registers and web-sites of the institutions to be more harmonised and easier to access.
- As regards the issue of striking the balance between the principle of transparency and the protection of personal data and/or between transparency and the protection of commercial and economic interests, many respondents, in particular NGO's and journalists, claimed that more weight should be given to the interest in disclosure. In this latter context, industry called for better protection of business information.
- A possible harmonisation of the rules on access to documents as contained in Regulation (EC) 1049/2001 with the rules on access to environmental information set out in Regulation (EC) 1367/2006 (implementing the Århus Convention) was widely supported by public bodies and individual citizens. By contrast, environmental NGOs had some concern that such an alignment might lower the transparency standard for environmental matters, while the chemical and biotechnological industries considered that the Århus provisions should remain a "*lex specialis*" vis-à-vis the general rules on public access.

The Commission is expected to submit a proposal for the amendment of Regulation 1049/2001 to the European Parliament and the Council in the course of the second quarter of 2008.

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<sup>21</sup> See Commission staff working document SEC (2008) 29/2 of 16 January 2008 : Report on the Outcome of the Public Consultation on the Review of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

### 3. *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.

At its latest meeting at political level, which took place on 2 October 2007, the Committee had an exchange of views on the results of the public consultation on the review of Regulation (EC) No 1049/2001 on the basis of an oral presentation by the European Commission. The discussion was concentrated on the main topics, which had been the subject of the public consultation, and on the need for increasing the user-friendliness of the public registers of the three institutions, notably through the creation of a common Internet portal.

### 4. *Presidency report on the implementation of the overall policy on transparency*<sup>22</sup>

In June 2006, the European Council adopted an overall policy on transparency<sup>23</sup>, the most important elements of which are the opening to the public the Council's deliberations under the co-decision procedure as well as the organisation on the regular basis of public debates on important issues affecting the interests of the Union and its citizens<sup>24</sup>.

In December 2007, the Presidency submitted a 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>25</sup>.

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<sup>22</sup> Although the issue of public access to the decision-making process of the Council is not in itself covered by Regulation (EC) No 1049/2001 nor, for that matter, by Article 255 of the EC Treaty, it is useful to sketch the developments in other areas of transparency within the framework of this report.

<sup>23</sup> See 10633/06, pp. 23 and 24, as well as the Council's annual report on access to documents - 2006, pp. 17-18.

<sup>24</sup> Article 8 of the Council's Rules of Procedure has been amended to this end. Cf. Council Decision 2006/683/EC, Euratom of 15 September 2006 adopting the Council's Rules of Procedure, OJ 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 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>25</sup> See 15827/07 and 15828/07.

While the new transparency measures did not appear to have had a negative impact on the Council's work ability to take decisions<sup>26</sup>, their implementation had, on the other hand, led to a marked increase in the number of public deliberations and debates<sup>27</sup>. Moreover, the new overall policy on transparency had contributed to widening access to Council documents since the documents relating to items discussed in public sessions of the Council are now automatically made public and available in the official languages of the European Union on the Council's Internet website<sup>28</sup>.

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<sup>26</sup> See 15828/07, p. 5.

<sup>27</sup> The findings of the report were based on data concerning the period 1 July 2006 - 31 October 2007. When compared to the previous four-year period (1 July 2002 - 30 June 2006), where the access to the decision-making process of the Council were governed by the principles established by the Seville European Council (the so-called "Seville regime"), the increase was particularly significant as regards the number of legislative files dealt with as "B" items. Altogether 60 % of the legislative "B" items examined by the Council since 1 July 2006 were dealt with in public, whereas only 21 % of such items had been discussed in public during the previous period (July 2002 - June 2006). Moreover, a total of 70 public debates, including 64 debates on important issues affecting the interests of the European Union and its citizens, were held during the examined 16 months period, whereas only 33 such debates had taken place during the preceding four-year period.

<sup>28</sup> See, in particular, Article 11(5) of Annex II to the Council's Rules of Procedure, OJ L 285, 16.10.2006, pp. 63-64.

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

### **A. COMPLAINT LODGED WITH THE EUROPEAN OMBUDSMAN**

No complaint was lodged concerning the Council's application of Regulation No 1049/2001 in 2007. The following section of this report refers briefly to an earlier complaint lodged in 2006 and closed in June 2007.

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

This complaint, which was already examined in the Council's Annual Report covering the year 2006, concerns the Council's refusal to grant full access to document 15066/05, containing at annex a summary of decisions taken during the 30th meeting of the Administrative Board of the Office for Harmonisation in the Internal Market (OHIM) (Trade marks and Designs) held in Alicante on 23 November 2005, and a list of candidates selected for the post of President of the Boards of Appeal.

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 Appeal Chambers in 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.

Against this background, the Council re-consulted OHIM in order to determine 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.

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.

On 21 June 2007, the Ombudsman closed the case, considering that it was not necessary to make further inquiries into the complaint.

## B. LEGAL ACTION

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

In 2007, three rulings were given by the Community Courts in cases concerning access to Council documents.

On 1 February 2007, the Court of Justice handed down its judgment in case C-266/05 P (José María Sison v. Council), which was already dealt with at some length in the Council's previous report on access to documents, to which the reader is therefore referred<sup>29</sup>.

The two remaining rulings of 25 April and 27 November 2007 were given by the Court of First Instance in case T-264/04 (WWF-EPO v. Council) and in joined cases T-3/00 et T-337/04 (Pitsiorlas v. Council and ECB).

### *Judgment of 25 April 2007 in case T-264/04 (WWF-EPO v. Council)*

In case T-264/04, the applicant, the World Wide Fund for Nature European Policy Programme (WWF-EPO), had brought proceedings for annulment of the Council's decision of 30 April 2004 refusing it access to Council documents concerning the state of the multilateral negotiations on "Sustainability and Trade" to be conducted within the framework of WTO and the proceedings of the Article 133 Committee (Deputies) of 19 December 2003. In support of its application, WWF-EPO had forwarded three pleas:

Firstly, it contested the Council's decision to refuse access to a note from the Commission to the Council's Article 133 Committee concerning the state of play of the WTO-negotiations on environment and trade, following the WTO Ministerial Conference in Cancun in September 2003. The applicant submitted, in this regard, that the Council had failed to state adequate reasons for its refusal to grant access to the Commission's note, and argued, moreover, that the Council should have balanced the citizen's right of access against the Council's interest to maintain confidentiality.

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<sup>29</sup> See the Council Annual report on access to documents - 2006, pp. 23-26.



Secondly, the applicant submitted that the Council had infringed upon Article 4(6) of Regulation (EC) No 1049/2001 by failing to apply properly the principle of proportionality in assessing the possibility of partial disclosure.

The third plea, by which the applicant argued that Article 2 of Regulation 1049/2001 had been infringed, consisted of three parts, alleging,

- first, failure by the Council to grant access to the minutes relating to the first item on the Agenda of the Article 133 Committee of 19 December 2003 on the grounds that there were no such minutes,
- second, refusal by the Council, in the absence of any minutes, to provide the applicant with information on the content of the discussions of the above-mentioned agenda item in a form capable of being disseminated, and
- third, refusal by the Council to grant access to the records of those in attendance at the Committee meeting of 19 December 2003.

In its judgment, the Court of First Instance rejected the three pleas and dismissed the action in its entirety.

Thus, the Court of First Instance took the view, that in its decision of 30 April 2004, the Council had *given sufficient reasons* for its refusal to grant access to the note and, secondly, *not misinterpreted* the conditions for applying the exceptions to public access to documents laid down in the third and fourth indents of Article 4(1)(a) of Regulation No 1049/2001<sup>30</sup>.

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<sup>30</sup> Pursuant to established case-law on access to documents, the Court's review of the legality of the institutions' decisions refusing access to documents *on the basis of the mandatory exceptions relating to the public interest*, laid down in Article 4(1)(a) of Regulation No 1049/2001 must be limited to verifying whether the procedural rules and the duty to state reasons have been complied with, the facts have been accurately stated, and whether there has been a *manifest error of assessment of the facts or a misuse of powers*.

In the present case, the Court found that in considering that disclosure of the Commission's note could have undermined relations with third countries referred to in the note as well as the room for negotiation needed by the Community and its Member States to bring the WTO-negotiations to a conclusion, *the Council did not commit a manifest error of assessment and was right to consider that disclosure of the note would have entailed the risk of undermining the public interest as regards international relations and the Community's financial, monetary and economic policy*.

Moreover, since the exceptions at issue in the dispute fell under Article 4(1) of Regulation No 1049/2001, the Council was *not required* in the case at hand *to balance the protection of the public interest against the applicant's interest in gaining access to the note*, the applicant's claim that its interest in having access to the note should have been balanced against the Council's interest in not disclosing it therefore had to be dismissed.

As for the applicant's second plea, alleging, in essence, that the Council had failed to properly apply the principle of proportionality in assessing whether partial disclosure of the note was possible, the Court took the view that this possibility had been thoroughly examined by the Council, which had also consulted the Commission on this question pursuant to Article 4(4) of Regulation No 1049/2001<sup>31</sup>.

Given the politically sensitive character of the WTO-negotiations referred to above, the Court found that the whole content of the note had to be regarded as sensitive, and that, in refusing the applicant partial access to that note, the Council's did not apply Article 4(6) of Regulation No 1049/2001 incorrectly.

As regards the applicant's third plea alleging the Council's failure to provide access to minutes of the 133 Committee (Deputies) and submitting that the absence of such minutes would render Article 2 of Regulation 1049/2001 devoid of any substance, the Court of First Instance took the view that it could not be concluded that the Council had acted in an arbitrary or unpredictable manner by failing to produce minutes on the first item on the Agenda of the Article 133 Committee of 19 December 2003<sup>32</sup>.

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<sup>31</sup> As a result of this examination, the Council had concluded that such partial disclosure under Article 4(6) of Regulation No 1049/2001 would not be possible since the exceptions in Article 4(1)(a) of that Regulation applied to the Commission's note in its entirety.

<sup>32</sup> The Court pointed out that – in order to fulfil the requirement of transparency which underlies Regulation No 1049/2001 - the institutions concerned must, in so far as possible and in a non-arbitrary and predictable manner, draw up and retain documentation relating to their activities.

However, in the present case, the purely informative nature of the first agenda item of the meeting of 19 December 2003 and the fact that it did not call for any specific implementing measure explained why it was not necessary to minute it and why the item was not recorded in a summary report or other subsequent document of the Article 133 Committee. It could therefore not be concluded that the Council, in claiming that no minutes existed on the agenda item concerned, infringed the applicant's right to access to documents conferred by Regulation No 1049/2001.

With regard to the refusal by the Council, in the absence of any minutes, to provide the applicant with information on the content of the discussions of the above-mentioned agenda item in a form capable of being disseminated, the Court noted that the scope of Regulation No 1049/2001, pursuant to Article 2(3) thereof, extends only to existing 'documents held by an institution, that is to say, documents drawn up or received by it and in its possession'. Consequently, the Council had not infringed the applicant's right of access to documents conferred by Regulation No 1049/2001 by refusing to provide it with information on the contents of the discussions relating to the first item on the agenda of the meeting of 19 December 2003, since that information did not exist in the form of a document that could be disseminated.

As for the refusal by the Council to grant access to the records of the Commission and the Member States' delegations who attended the Committee meeting of 19 December 2003, the Court pointed out that the applicant had not asked the Council to grant it access to such internal records when submitting its confirmatory application, and the applicant's arguments concerning access to those records could therefore not be accepted. Moreover, even if the applicant's request had included a request for access to internal records drawn up by the Commission and Member States' delegations, the Council could not communicate those records pursuant to Article 2(3) of Regulation No 1049/2001, since they were neither held nor received by the Council.

*Judgment of 27 November 2007 in joined cases T-3/00 and T-337/04 (Pitsiorlas v. Council and ECB)*

Regarding the judgment of the Court of First Instance in joined cases T-3/00 and T-337/04<sup>33</sup>, it should be recalled that the applicant in these cases sought the 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 as well as compensation under Articles 235 and 288, second paragraph, of the EC Treaty, for damages arising out of these refusals.

In its judgment of 27 November 2007, the Court of First Instance considered that the ECB by its decision of 8 November 1999 had infringed on its duty to state reasons for its refusal, wherefore the decision of refusal should be annulled. The Court dismissed, however, the action for annulment as far as the Council was concerned as well as the action for damages against the two Community institutions.

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<sup>33</sup> The request for access was submitted and subsequently examined under the provisions of Decision 93/731/EC, OJ 1993 L 340, 31.12.1993, p. 43. For further details on the initial stages of the proceedings, see also the Council's annual report on access to documents - 2003, pp. 34-35 as well as the annual report for the year 2004, pp. 28-29.

In its decision of 30 July 1999 the Council had stated that the requested document had been drawn up by the Central Banks Governors and therefore invited the applicant to send his request directly to the author of the document in accordance with the provisions of Article 2(2) of Decision 93/731/EC on public access to documents<sup>34</sup>. The applicant, however, claimed that the Council had infringed the "basic Community law principle which provides for public access to documents" as well as Article 1 of Decision 93/731/EC and Article 253 of the EC Treaty (failure to state the reasons).

In its ruling, the Court of First Instance, pointed out that, by its decision, the Council had neither infringed the right of access nor the obligation to motivate its decision, nor, for that matter, the principles of sound administration and protection of legitimate expectations: Where, as in the case at hand, the Council was not in possession of the documents corresponding to the request for access, Decision 93/731 did not require it to search for and identify the relevant documents, their respective authors and who was in possession of them in order to be able to inform accordingly the person seeking access. In the present case, the Council none the less searched and managed to identify a document covered by the request for access, namely the report of the Committee of Governors, and helpfully referred the applicant to the ECB, the institution in possession of that document.

The Court finally dismissed the action for damages against the Council and the ECB, stating that the conditions which must be met in order for extra-contractual liability to be incurred, concerning the existence of actual and certain damage and a direct causal link between that damage and the allegedly unlawful conduct of the defendants, were not satisfied.

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<sup>34</sup> This provision, containing the so-called "*originator rule*", read as follows: "*Where the requested document was written by a natural or legal person, a Member State, another Community institution or body, or any other national or international body, the application must not be sent to the Council, but direct to the author.*" The *originator rule* was abolished with the entry into force of Regulation (EC) 1049/2001 on 3 December 2001, save for third party documents which, although held by the institutions, had been established prior to that date. For further information on that issue, see *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, pp. 7-8 and p. 14.

## **VI. FINAL REMARKS**

The Council's experience in implementing Regulation No 1049/2001 in 2007 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 we stated in the first part of this report, the number of individual users of the register increased by 22,4 % during the reference period, whereas the total number of visits rose by 21 % (2 078 602 visits in 2007 against 1 722 354 in 2006); this was the fifth successive annual increase. We should point out here that 67,2 % of the Council documents produced in 2007 – i.e. 108 343 of the 161 121 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.

It should come as no surprise, therefore, to learn that the number of requests for access in 2007 was somewhat lower than in 2006, when bearing in mind that the requests for access to Council documents relate almost exclusively to documents which are listed but not directly accessible via the register.

As confirmed by the statistical data provided in the annex to this report, more than 50 % of the requests for access to Council documents which were submitted in 2007 refer to the areas of Justice and Home Affairs, External Relations - CFSP or Defence and Military Matters (ESDP).

A total of 811 documents of the documents considered (representing roughly 10 % of the documents requested in 2007) were classified as CONFIDENTIEL UE or 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 administrative burden, while meeting the time-limits laid down in Regulation (EC) No 1049/2001. By way of illustration, in 2007 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 28 working days in 2007, compared to 24 working days in 2006.

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 15 occasions in 2007. 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 2007 fell in comparison to 2006 (78,9 % in 2007 as against 87,7 % in 2006). However, this must be seen in the light of the above-mentioned fact that a very considerable number of documents were made directly accessible to the public via the register as soon as they were circulated.

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 2007.

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**STATISTICS ON PUBLIC ACCESS TO COUNCIL DOCUMENTS**

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

2003	2004	2005	2006	2007
2.830	2.160	2.100	2.224	1.964

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

2003	2004	2005	2006	2007
12.565	12.907	9.457	11.353	7.809

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

2003	2004	2005	2006	2007
10.912	10.971	7.535	9.606	6.123 <sup>35</sup>
partially/wholly 1.928 8.984	partially/wholly 1.092 9.879	partially/wholly 1.254 6.281	partially/wholly 1.155 8.451	partially/wholly 945 5.178

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

2003	2004	2005	2006	2007
45	35	51	40	18

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

2003	2004	2005	2006	2007
162	198	253	142	30
64 partially/wholly 42 22	113 partially/wholly 36 77	130 partially/wholly 60 70	99 partially/wholly 53 46	15 partially/wholly 9 6

**6. Rate of document released for the procedure as a whole<sup>36</sup>**

2003		2004		2005		2006		2007	
71,7%	87,4%	77%	85,7%	67,3%	81,2%	76,8%	87,7%	66,7%	78,9%

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

2003		2004		2005		2006		2007	
448.236	257.052 (57.3%)	569.372	354.421 (62.2%)	691.410	454.473 (65.7%)	727.685	483.577 (66.4%)	1.010.217	724.338 (71,7%)

<sup>35</sup> Based on 7.775 documents considered.

<sup>36</sup> Based on documents released wholly (left column) or wholly + partially (right column).

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

		2003		2004		2005		2006		2007	
Civil society	Environmental Lobbies	21,4%		21,8%		17,2%		0,9%	17,6%	0,8%	14,2%
	Other groups of interests							5,3%		4,7%	
	Industrial/Commercial Sector							10,3%		7%	
	NGOs							1,1%		1,7%	
Journalists		2,1%		2,6%		2,3%		2,3%		2,9%	
Lawyers		13%		10,7%		10,2%		9,1%		8,8%	
Academic world	University Research	24%	26,5%	25,5%	27,7%	31%	32,3%	32,2%	34,5%	38,2%	40%
	Library	2,5%		2,2%		1,3%		2,3%		1,8%	
Public authorities (non-EU institutions, third-country representatives, etc.)		8,4%		7,3%		6,2%		6,9%		6,1%	
Members of the European Parliament and their assistants		2,3%		2,1%		2,4%		1,5%		1,3%	
Others		9,3%		10,4%		12,6%		14,5%		13,3%	
Undeclared professional origin		17%		17,4%		16,8%		13,6%		13,2%	



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

		2003		2004		2005		2006		2007	
Civil society	Environmental Lobbies	7,9%		10,4%		9,4%		0%	8,6%	0%	0%
	Other groups of interests							8,6%		0%	
	Industrial/Commercial Sector							0%		0%	
	NGOs							0%		0%	
Journalists		5,3%		6,9%		6,3%		5,7%		18,7%	
Lawyers		23,7%		17,2%		9,4%		11,4%		12,5%	
Academic world	University Research	34,2%	34,2%	34,5%	34,5%	28,1%	28,1%	51,4%	54,3%	50%	56,2%
	Library	0%		0%		0%		2,9%		6,2%	
Public authorities (non-EU institutions, third-country representatives, etc.)		2,6%		0%		3,1%		0%		6,3%	
Members of the European Parliament and their assistants		10,5%		10,4%		3,1%		0%		0%	
Others		2,6%		10,3%		15,6%		11,4%		6,3%	
Undeclared professional origin		13,2%		10,3%		25%		8,6%		0%	

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

		2003	2004	2005	2006	2007
Belgium		24,7%	27,1%	27,5%	26,2%	26,4%
Bulgaria		0,2%	0,1%	0,4%	0,6%	0,1%
Czech Republic		0,5%	0,9%	0,9%	1%	1,4%
Denmark		1,9%	1,7%	1,2%	1,3%	1,1%
Germany		14,1%	14%	12,9%	15,5%	16%
Estonia		0,1%	0,1%	0,1%	0,4%	0%
Greece		0,9%	1%	1,2%	1,3%	1,3%
Spain		6,4%	4,8%	5,3%	5,7%	5%
France		6,1%	6,7%	7,7%	8,1%	7,1%
Ireland		1,1%	0,8%	1%	0,9%	0,6%
Italy		5,2%	6,9%	6,9%	6,6%	6%
Cyprus		0,3%	0,3%	0,1%	0,3%	0,3%
Latvia		0%	0,1%	0,1%	0,2%	0%
Lithuania		0,3%	0,3%	0,4%	0,4%	0,1%
Luxembourg		2%	0,8%	0,6%	0,7%	1%
Hungary		0,8%	0,6%	0,9%	0,5%	0,7%
Malta		0,2%	0,3%	0,2%	0,2%	0,3%
Netherlands		4,9%	5,5%	7%	6%	5,8%
Austria		2%	1,7%	2%	1,6%	1,7%
Poland		1,5%	1,2%	1,4%	1,5%	1,5%
Portugal		1,5%	0,5%	1%	1,2%	0,9%
Romania		0%	0,1%	0,2%	0,7%	1,1%
Slovenia		0,4%	0,3%	0,2%	0,4%	0,4%
Slovakia		0,2%	0,4%	0,3%	0,3%	0,3%
Finland		0,8%	0,4%	0,4%	0,5%	0,8%
Sweden		1,3%	1,8%	1,8%	1,6%	1,8%
United Kingdom		9,6%	8%	8%	7,9%	9,5%
Third countries	Candidate countries	0,3%	0,3%	1,3%	1,7%	1%
	Others	5,1%	6,7%	6,7%	6,8%	7%
Non specified		7,9%	7,2%	3,2%	1,8%	0,8%

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

		2003	2004	2005	2006	2007
Belgium		26,3%	48,3%	28,1%	17,1%	37,5%
Bulgaria		0%	0%	0%	0%	0%
Czech Republic		0%	0%	0%	0%	6,3%
Denmark		0%	3,5%	0%	0%	0%
Germany		15,8%	3,5%	12,5%	22,8%	6,2%
Estonia		0%	0%	0%	0%	0%
Greece		0%	0%	0%	0%	0%
Spain		0%	3,4%	3,1%	0%	0%
France		5,3%	0%	3,1%	5,7%	6,2%
Ireland		0%	0%	0%	0%	0%
Italy		0%	10,3%	9,4%	8,6%	6,2%
Cyprus		0%	0%	3,1%	0%	0%
Latvia		0%	0%	0%	0%	0%
Lithuania		0%	0%	0%	0%	0%
Luxembourg		0%	0%	0%	0%	0%
Hungary		0%	0%	0%	2,9%	0%
Malta		0%	0%	0%	0%	0%
Netherlands		29%	6,9%	9,4%	8,6%	6,3%
Austria		0%	0%	6,3%	0%	0%
Poland		2,6%	0%	0%	2,9%	0%
Portugal		0%	0%	0%	0%	0%
Romania		0%	0%	0%	0%	0%
Slovenia		0%	0%	0%	0%	0%
Slovakia		0%	0%	0%	0%	6,3%
Finland		0%	0%	0%	0%	0%
Sweden		0%	0%	3,1%	2,8%	0%
United Kingdom		18,4%	20,7%	18,8%	22,9%	25%
Third countries	Candidate countries	0%	0%	0%	0%	0%
	Others	2,6%	3,4%	3,1%	5,7%	0%
Non specified		0%	0%	0%	0%	0%

## 12. Sector

	2003	2004	2005	2006	2007
Agriculture, Fisheries	4,7%	4,6%	4,2%	5,9%	6,8%
Internal Market	16,3%	14,2%	6,2%	4,6%	2,9%
Research	0,1%	0,3%	0,3%	0,6%	0,4%
Culture	0,5%	0,2%	0,5%	1,1%	0,5%
Education/Youth	0,8%	1,4%	0,7%	1,2%	1,1%
Industry	0,5%	0,4%	0,4%	0,3%	0,3%
Competitiveness	0,2%	2,2%	5,3%	5,8%	1,1%
Energy	2,9%	1,4%	1,6%	1,1%	2,1%
Transport	4,4%	4,9%	5,3%	3,8%	3%
Environment	5,2%	6,8%	7,7%	6,6%	8,2%
Health and Consumer Protection	4%	4,3%	3,1%	2,3%	2,1%
Economic and Monetary Policy	9,1%	3,3%	2,9%	2,6%	2,2%
Tax Questions – Fiscal Issues	6%	3,2%	4,4%	2,5%	2,4%
External Relations – CFSP	9,1%	14,6%	12,8%	14,3%	18,1%
Civilian Protection	0%	0,3%	0,1%	0,1%	0,6%
Enlargement	2,4%	1,8%	2,2%	1,8%	1%
Defence and Military matters	0,7%	2,9%	2,5%	2,4%	6%
Assistance for Development	0,2%	0,3%	0,7%	0,7%	0,2%
Regional Policy and Economical/Social Cohesion	0,1%	0%	0,9%	1,2%	0,1%
Social Policy	3,5%	2,7%	3%	2,9%	1,9%
Justice and Home Affairs	22%	20,1%	22,5%	24,5%	26,7%
Legal questions	1,6%	2,5%	3,5%	3,8%	3,5%
Functioning of the institutions	1,2%	1,5%	1,3%	1,7%	1,1%
Financing of the Union (Budget, Statute)	1%	0,3%	0,2%	0,6%	0,2%
Transparency	0,8%	0,9%	0,3%	0,6%	0,3%
General policy questions	1,2%	1,7%	1%	1%	0,4%
Parliamentary Questions	1,1%	2,9%	5,4%	5,5%	5,4%
Various	0%	0,3%	0,4%	0,4%	0,4%

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

	2003		2004		2005		2006		2007	
	#	%	#	%	#	%	#	%	#	%
Protection of public interest as regards public security	270	16%	440	21%	302	15,8%	253	17,1%	219	13,3%
Protection of public interest as regards defence and military matters	62	3,8%	218	11%	123	6,4%	67	4,5%	38	2,3%
Protection of public interest as regards international relations	482	28,7%	330	16,2%	395	20,6%	182	12,3%	249	15,1%
Protection of public interest as regards the financial, monetary or economic policy of the Community or a Member State	13	0,7%	21	1,1%	16	0,8%	1	0,1%	0	0%
Protection of privacy and the integrity of the individual (protection of personal data)	5	0,3%	13	0,7%	4	0,2%	5	0,3%	4	0,2%
Protection of commercial interests of a natural or legal person, including intellectual property	0	0%	1	0%	0	0%	0	0%	1	0,1%
Protection of court proceedings and legal advice	185	10,9%	196	8,8%	34	1,8%	29	2%	14	0,8%
Protection of the purpose of inspections, investigations and audits	0	0%	0	0%	1	0%	4	0,3%	0	0%
Protection of the Institution's decision-making process	547	31,2%	665	33,3%	925	48,3%	637	43,2%	627	38%
Several reasons together or other reasons	141	8,4%	158	7,8%	116	6,1%	298	20,2%	498	30,2%
Document not held by the Council/Other author	0	0%	1	0,1%	0	0%	0	0%	0	0%

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

	2003		2004		2005		2006		2007	
	#	%	#	%	#	%	#	%	#	%
Protection of public interest as regards public security	4	4%	24	27%	61	49,6%	16	37,2%	1	6,7%
Protection of public interest as regards defence and military matters	2	2%	22	25,9%	7	5,7%	7	16,3%	0	0%
Protection of public interest as regards international relations	61	61,6%	19	21,2%	25	20,3%	6	14%	3	20%
Protection of public interest as regards the financial, monetary or economic policy of the Community or a Member State	7	7,1%	0	0%	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	7	7,1%	4	4,7%	0	0%	2	4,6%	0	0%
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	14	14,2%	10	11,8%	14	11,4%	3	7%	0	0%
Several reasons together or other reasons	4	4%	8	9,4%	16	13%	9	20,9%	11	73,3%
Document not held by the Council/other author	0	0%	0	0%	0	0%	0	0%	0	0%

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

	2003	2004	2005	2006	2007
For the initial applications	7 (2830 closed appl.)	9 (2160 closed appl.)	13 (2100 closed appl.)	14 (2224 closed appl.)	13 (1964 closed appl.)
For the confirmatory applications <sup>37</sup>	23 (45 closed appl.)	24 (35 closed appl.)	26 (51 closed appl.)	24 (40 closed appl.)	28 (18 closed appl.)
Ponderated average (initial + confirmatory)	7,25	9,24	13,31	14,17	13,14
Ombudsman <sup>1</sup>	46	36	38	57	

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

	2003	2004	2005	2006	2007
Initial 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	386 of 1964, being 19,7% of the applications
Confirmatory applications <sup>1</sup>	37 [of 45]	24 [of 35]	40 [of 51]	32 [of 40]	14 [of 18]

<sup>37</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.

Council of the European Union

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