



CONSILIUM

EN

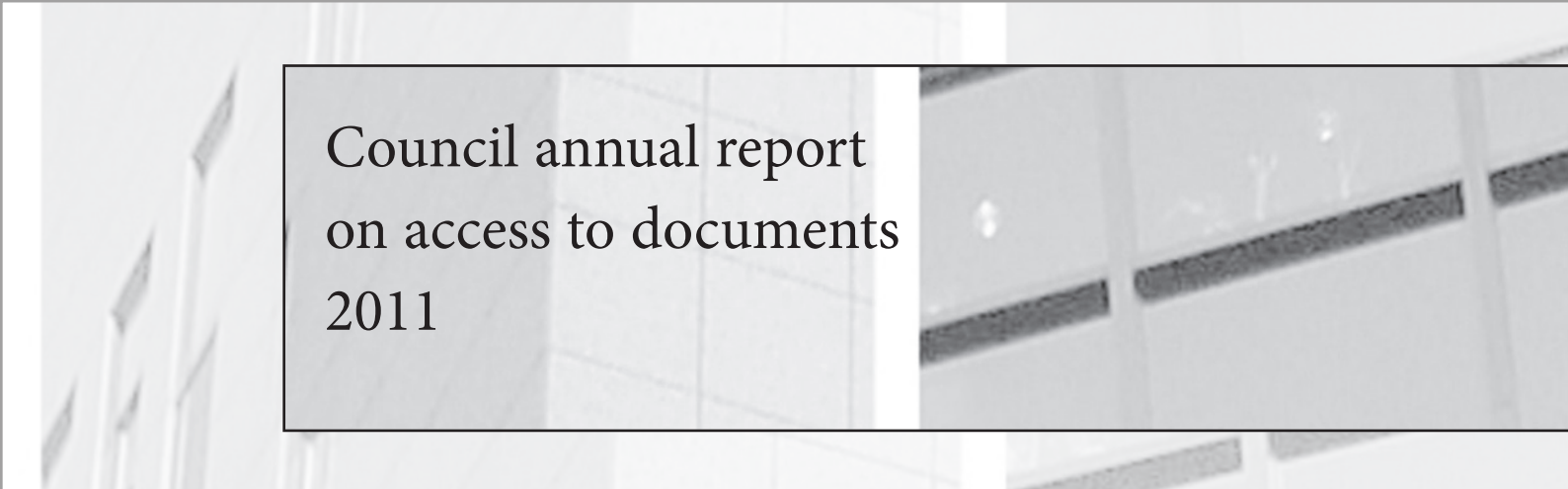
GENERAL SECRETARIAT OF THE COUNCIL

Council annual report on access to documents 2011



REPORTS

MAY 2012



Council annual report
on access to documents
2011

MAY 2012

Notice

This brochure is produced by the General Secretariat of the Council; it is for information purposes only. For any information on the European Council and the Council, you can consult the following websites:

www.european-council.europa.eu

www.consilium.europa.eu

or contact the Public Information Department of the General Secretariat of the Council at the following address:

Rue de la Loi/Wetstraat 175

1048 Bruxelles/Brussel

BELGIQUE/BELGIË

Tel: +32 22815650

Fax: +32 22814977

www.consilium.europa.eu/infopublic

More information on the European Union is available on the Internet (<http://europa.eu>).

Cataloguing data can be found at the end of this publication.

ISBN 978-92-824-3655-4

doi:10.2860/58503

© European Union, 2012

Reproduction is authorised provided the source is acknowledged.

Printed in Belgium

CONTENTS

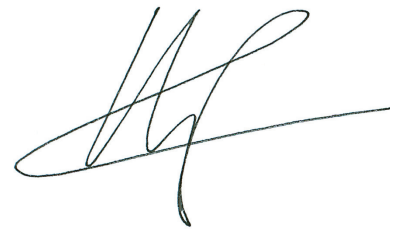
FOREWORD OF THE DIRECTOR-GENERAL	5
INTRODUCTION	6
I. IMPLEMENTATION OF REGULATION (EC) NO 1049/2001	7
1. Public register of Council documents	7
2. Requests for access to Council documents	8
3. Legislative transparency	9
II. ANALYSIS OF REQUESTS FOR PUBLIC ACCESS	10
1. Professional profiles and geographical distribution of applicants	10
2. Policy areas concerned by the requests	11
3. Number of documents examined and released	12
III. APPLICATION OF EXCEPTIONS TO THE RIGHT OF PUBLIC ACCESS	14
IV. KEY DEVELOPMENTS	16
1. Proposal for a recast of Regulation (EC) No 1049/2001	16
2. Interinstitutional Committee on Access to Documents	16
3. Visit of the Ombudsman at the General Secretariat of the Council	16
V. COMPLAINTS LODGED WITH THE EUROPEAN OMBUDSMAN AND LEGAL ACTION TAKEN	17
1. Complaint lodged with the European Ombudsman	17
2. Legal action	18
VI. FINAL REMARKS	20
ANNEX: STATISTICS ON PUBLIC ACCESS TO COUNCIL DOCUMENTS	21

FOREWORD OF THE DIRECTOR-GENERAL

The year 2011 marked the tenth anniversary of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents. This Regulation, adopted in May 2001, governs the right of access of EU citizens to documents of the European Parliament, the Council and the Commission. Since then, the citizens' interest in what the EU does has grown remarkably. In the Council's case, this can be notably observed from the growing number of requests for public access. In 2011, in comparison to the first full year of the implementation of Regulation (EC) No 1049/2001, the number of requests was almost tenfold higher.

The present annual report on public access to Council documents provides information on the Council's public register of documents. It shows how the statistics on access to documents have evolved and highlights the key developments as regards the implementation of the Regulation by the Council in 2011. The analysis of the requests for public access and the citizens' use of the arrangements made for them to exercise their right of public access suggest that the aims set by the Treaties and by Regulation (EC) No 1049/2001 continued to be achieved in 2011.

In order to maintain such high standards, we have to adapt to new technologies and new requirements. To reach this goal, the public register has recently been modified in order to be more accessible and user-friendly. Further changes can be expected in the near future. The Council's website will also undergo a general overhaul in order to facilitate access to factual information about the Council's work. A database of voting records on legislative acts will soon go online, and the Council is engaging with transparency stakeholders through more consistent contacts and a more proactive approach.



Reijo KEMPPINEN
Director-General

May 2012

INTRODUCTION

This report, drawn up pursuant to Article 17(1) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents¹, covers the year 2011 and is based on statistical data summarised in its annex. It gives information on the Council's public register of documents and statistics on public access to documents. In addition, the report highlights the key developments in the tenth year of implementation of the Regulation and reviews complaints submitted to the European Ombudsman, as well as rulings given by the Courts of the European Union in 2011 in the field of the Regulation.

Additional information and previous reports on access to Council documents and information on other transparency issues can be found at www.consilium.europa.eu, under "Documents"/"Policy regarding access to European Council and Council documents".

1 OJ L 145, 31.5.2001, p. 43. Article 17(1) 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"*.

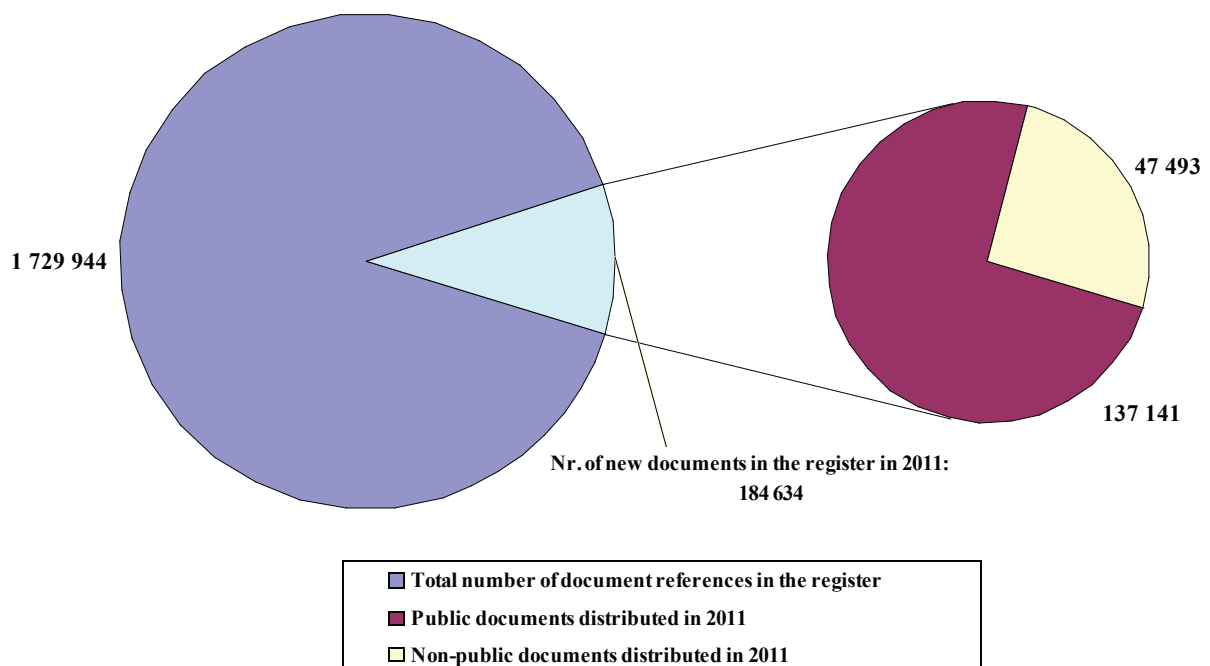
I. IMPLEMENTATION OF REGULATION (EC) NO 1049/2001

1. Public register of Council documents

The public register of Council documents, which has been operational since 1 January 1999, contains references to all Council documents entered therein via an automatic archiving system². It also contains the full text of a large number of documents which are to be made available to the public as soon as they have been distributed³ and of documents which have been made public following a request for access made by members of the public. Furthermore, if access to requested documents cannot be granted to the full texts, parts of such documents are disclosed, if possible, and made available in the register⁴. Numerous legislative documents are also made public each year via the public register pursuant to Article 11(6) of Annex II to the Council's Rules of Procedure⁵ (see point 3, Legislative transparency).

The number of document references and downloadable documents in the public register grows every year. The following graphics show the situation of the register on 31 December 2011:

Figure 1: Developments in the Public Register in 2011



² Under Article 11 of the Regulation, the institutions are required to make a document register available in electronic form.

³ Article 11 of Annex II to the Council's Rules of Procedure contains a list of document types which have to be accessible to the public as soon as they have been distributed.

⁴ Partial disclosure is practised in conformity with Article 4(6) of the Regulation. "P/A" (partially available) documents registered before 1 February 2004 are not usually downloadable for technical reasons but are available on request.

⁵ This provision prescribes that, unless one or more of the provisions of Article 4 of the Regulation are applicable, all preparatory documents relating to a legislative act shall be made available to the public in full after adoption of one of the acts by the Council during an ordinary or special legislative procedure and joint texts by the Conciliation Committee under the ordinary legislative procedure or the final adoption of the act.

In 2011:

- the register listed 1 729 944 documents (all languages), 11 % more than at the end of 2010. 77,3 % of these documents were public and downloadable (PDF or HTML);
- 184 634 new documents were distributed in 2011, out of which 74,3 % (i.e. 137 141) were public and downloadable. This is 4,5 % more than in 2010;
- the register contained 26 219 documents bearing the code "P/A" (i.e. partially accessible), including 4 858 which were accessible on-line (in PDF format);
- 381 sensitive documents⁶ were distributed, 32 classified as "SECRET UE" and 349 as "CONFIDENTIEL UE", out of which 260 "CONFIDENTIEL UE" are mentioned in the register⁷.

The Register continues to be an important research tool for citizens wishing to keep close track of the activities of the European Union. In 2011,

- 1 371 324 visits were made to the Register for a total of 23 274 962 consultations per Register page;
- 557 391 unique visitors (monthly average of 46 000) visited the Register.

In 2011, efforts were made to make it more user friendly and easily searchable, e.g.; entry page simplified, texts shortened and simplified, fields added and/or removed in the search forms.

2. Requests for public access to Council documents

A majority of requests for public access to Council documents are made by using the electronic form in the public register. The initial requests are processed by the General Secretariat of the Council. In the event of a total or partial refusal of public access to a document at the initial stage, 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 or institute proceedings before the General Court of the European Union.

6 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.

7 In accordance with Article 9(2) and Article 11(2) of Regulation (EC) No 1049/2001.

How are requests for public access to Council documents handled?

Upon reception of an initial request for public access to documents (in writing), the Transparency Team of the General Secretariat registers the request in its database, identifies the requested documents and does a preliminary examination. In order to establish whether public access can be granted, the originating departments of the requested documents are consulted. Following the consultation and, if necessary, further examination of the documents, a reply is sent to the applicant (with documents if so decided).

A confirmatory application is also registered by the Transparency Team who then examines the requested documents in collaboration with the Council's Legal Service and the originating departments. The confirmatory application and a draft reply to the applicant, drawn up by the Transparency team and the Legal Service, are then examined by the Council's preparatory body responsible for transparency issues, i.e. the Working Party on Information, before referral to the Permanent Representatives Committee (Coreper) and the Council for approval. Once the Council has approved the reply, it is sent to the applicant (with documents if so decided).

Both initial requests and confirmatory applications must be replied within 15 working days. In exceptional cases, e.g. very large number of requested documents, the deadline may be extended for an additional 15 working days.

In 2011:

- the Council received 2 116 initial requests and 27 confirmatory applications for public access;
- the General Secretariat of the Council extended the time limit for examining initial requests in 24,2 % of the cases;
- processing time of initial requests averaged 16 working days (against 17 days in 2010); for confirmatory applications the average time was 29 working days in 2011 (against 28 working days in 2010).

3. Legislative Transparency

Article 11(5)(b) of the Annex II to the Council's Rules of Procedure provides that all documents submitted to the Council which are listed on the Council's agenda under an item included in the 'legislative deliberations' part or that are marked with the words 'public deliberation' or 'public debate' shall be made available to the public as soon as they have been circulated. In practice, these documents are made available in the Public register of Council documents.

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. This document also includes information on the results of vote, the voting rule applicable, as well as statements concerning the legislative acts which have been entered into the minutes of the Council⁸.

⁸ The monthly summary can be consulted on the Council's website www.consilium.europa.eu under "Documents" - "Legislative Transparency" - "Summary of Council acts". The results of the Council's votes on draft legislative acts or in other cases of Council deliberations open to the public may be consulted at the same address under "Documents" - "Legislative Transparency" - "Public votes".

II. ANALYSIS OF REQUESTS FOR PUBLIC ACCESS

1. Professional profiles and geographical distribution of applicants

Figure 2: Professional profile of the applicants (initial stage)

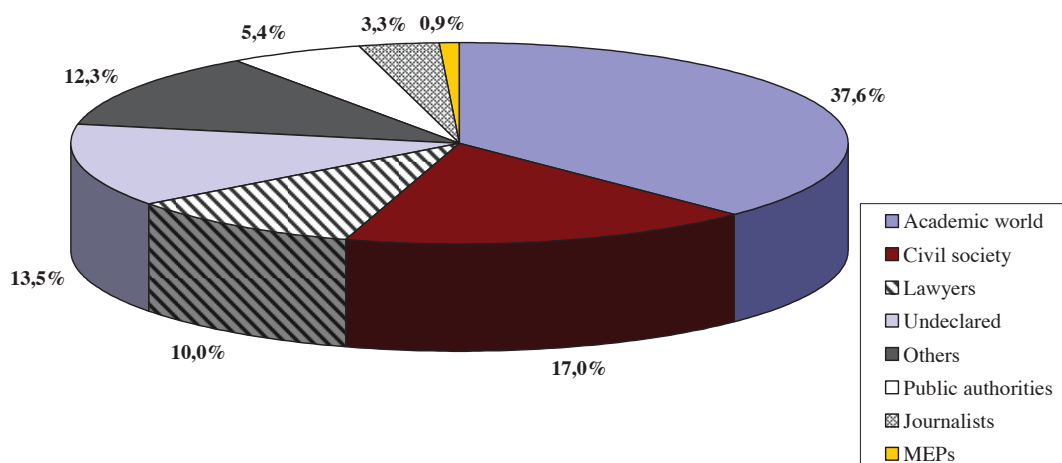
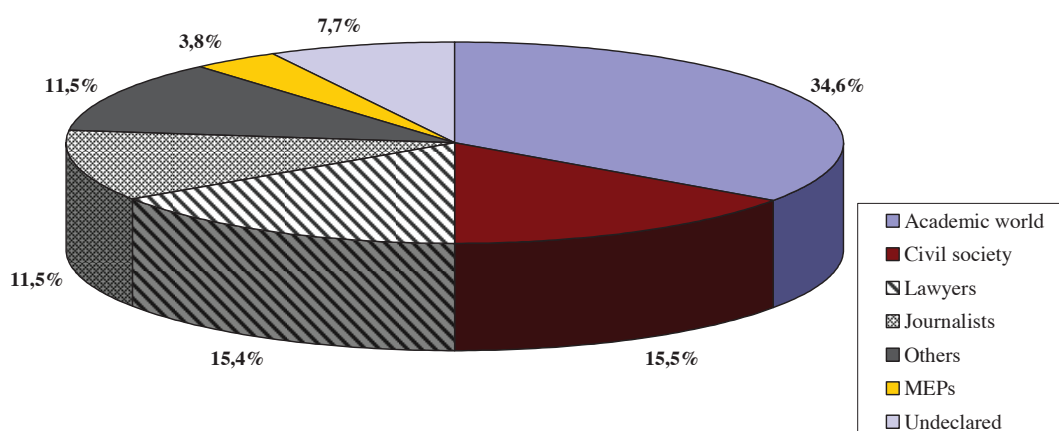


Figure 3: Professional profile of the applicants (confirmatory stage)



Two elements are worth noting:

- since applicants are not required to provide their identity or reasons for their requests, which are usually sent by e mail, the occupation of a significant proportion of the applicants (13,5 %) remains unknown;
- while in 2011, 11,5 % of the confirmatory requests for public access were submitted by journalists, this category of applicants accounted for only 3,3 % of the requests at the initial stage. This is mainly due to the fact that the institutions' public registers of documents represent only one of several possible sources of information for the press.

23 % of all requests received in 2011 were received during the months of May and June. Those originating from the academic environment clearly increased towards the end of the academic year, i.e. one third came

between April and June. The number of requests originating from lawyers and civil society, including various interest groups and the industrial and commercial sector, remained fairly stable all year round.

The geographical distribution of applicants can be summarized as follows⁹:

- initial requests originating from EU countries originated mainly from Belgium (30,5 %), Germany (14,5 %) and the United Kingdom (9,2 %);
- initial requests from non-EU countries represented 6,4 % of the total, out of which requests from the candidate countries accounted for 0,5 %;
- confirmatory applications from EU countries came mainly from Belgium and the United Kingdom (both representing 23,1 %) as well as Germany (19,2 %);
- confirmatory applications from non-EU countries accounted for 3,8 % (none from the candidate countries).

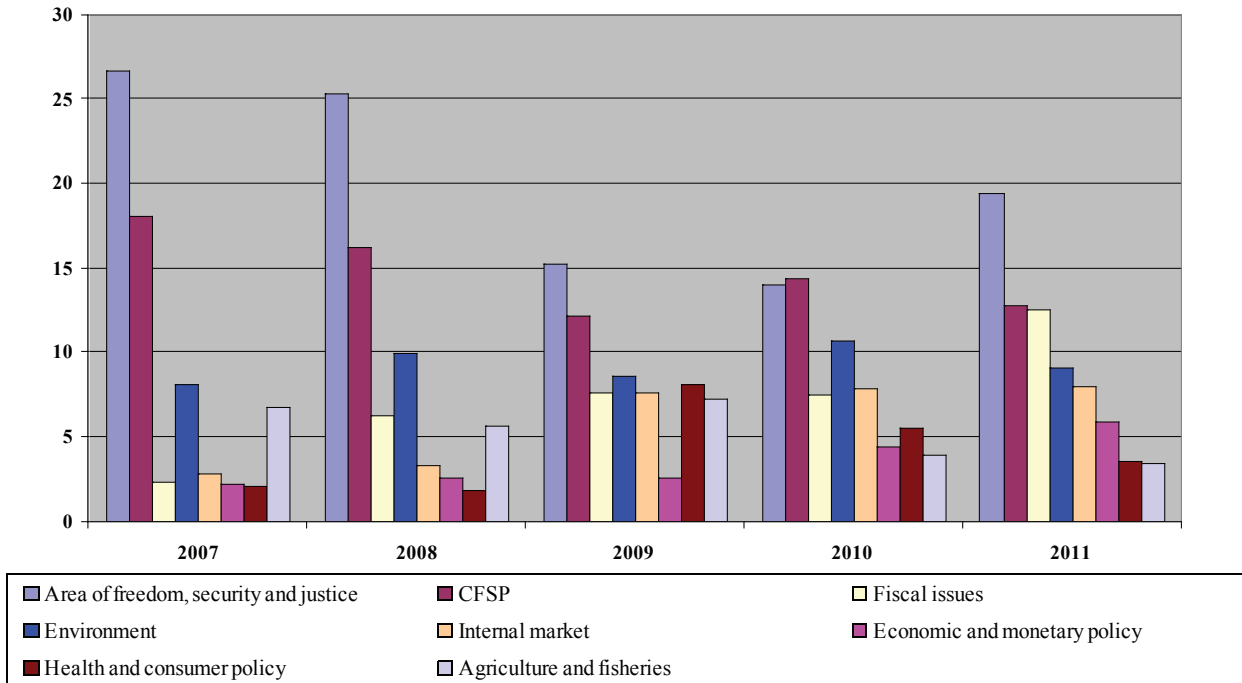
Applicants from Croatia made 7 initial requests for access in 2011, compared to two in 2009 and 2010.

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

2. Policy areas concerned by the requests for public access

Breakdown of the requests by policy area (8 most popular policy areas) between 2007 and 2011:

Figure 4: Percentage of requests covered by most popular fields 2007-2011



⁹ According to Regulation (EC) No 1049/2001, any citizen of the [European] Union, and any natural or legal person residing or having its registered office in a Member State, has a right to request access to documents of the institutions. Annex II, Article 1 of the Council’s Rules of Procedure extends this right to any natural or legal person.

Thus, in 2011:

- the interest in the area of freedom, security and justice rose (19,5 % in 2011 against 14 % in 2010 and 15,3 % in 2009);
- the number of requests concerning external relations and the common foreign and security policy (CFSP) decreased (12,8 % in 2011 against 14,4 % in 2010);
- the other most popular policy areas were fiscal issues (12,5 %), environment (9,1 %) and internal market (8 %).

Out of the 599 classified documents requested, 41 % concerned the area of freedom, security and justice, 37,5 % the CFSP and 7 % the European Security and Defence Policy (ESDP).

The number of requests for public access to documents on economic and monetary policy continued to increase in 2011 (5,9 % against 4,4 % in 2010 and 2,6 % in 2009).

In 2011, events of particular interest to the public resulted in increased numbers of requests for public access to documents in related areas. For example, the European External Action Service (EEAS) became operational on 1 January 2011. The large media coverage of this event resulted in 624 requests concerning external relations and the common foreign and security policy (CFSP) during the period January-March 2011, i.e. more than 50 % of all requests in this area for 2011. Similarly, considerable public interest in the United Nations Climate Change Conference which took place in Durban, South Africa, from 28 November until 11 December 2011, resulted in a peak in the number of requests in November, in addition to the normal peak during the months of May and June (see chapter on professional profiles). However, even though applicants demonstrated more interest in documents relating to economic and monetary policy in 2011 (5,9 % of all requests in 2011 as against 4,4 % in 2010), the number of requests concerning this policy area did not increase as a result of the meetings of the Eurogroup in April, July, October and December.

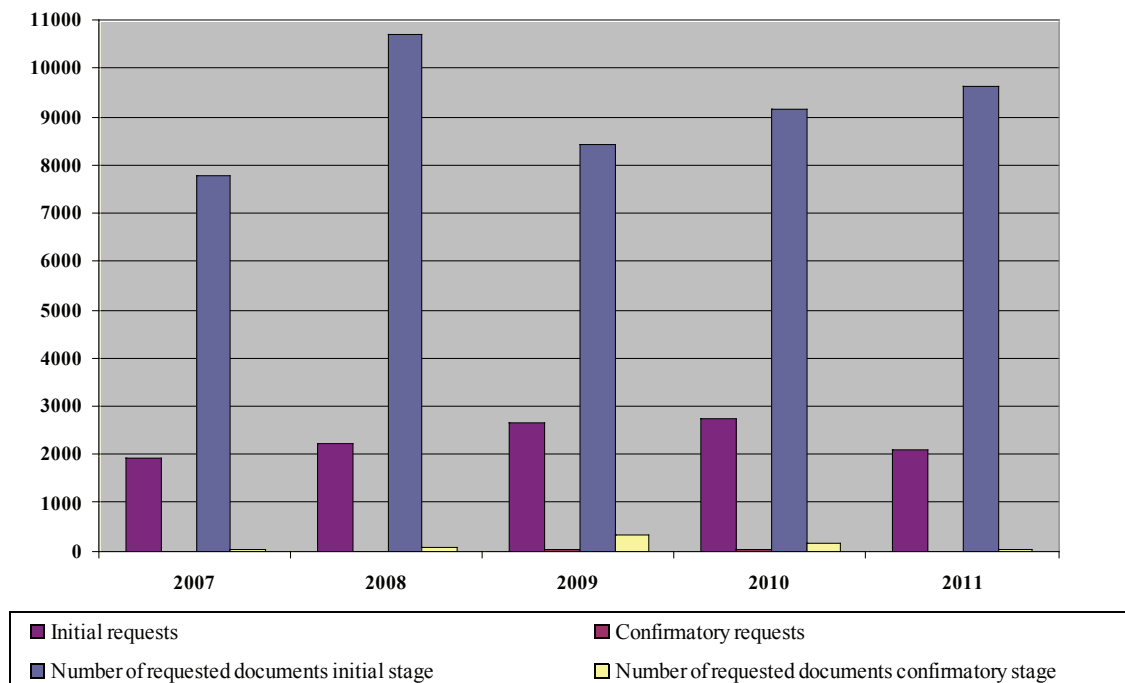
3. Number of documents examined and released

As regards the number of documents examined in 2011:

- the General Secretariat examined 2 116 initial requests for public access to 9 641 documents, 8 506 of which were made available (7 403 in full and 1 103 in part);
- the Council examined 27 confirmatory applications for public access to 59 documents, 25 of which were released in full. For 13 documents, partial access granted at the initial stage was confirmed and in 2 cases extended partial access was granted;
- initial and confirmatory requests combined, 599 classified documents were examined (19 classified as "CONFIDENTIEL UE" and 580 classified as "RESTREINT UE");
- initial and confirmatory requests combined, 77 % of the requested documents were fully disclosed (88,6 % if documents to which partial access was granted are also taken into account).

The evolution as regards the number of requests (both the initial and the confirmatory stage) and the number of requested documents during the period 2007-2011:

Figure 5: Number of requests and requested documents 2007-2011



The number of documents disclosed in full or in part (both initial and confirmatory stage) totalled 8 506 in 2011.

Out of the documents disclosed in full following a request for public access:

- 18 % concerned the area of freedom, security and justice;
- 13,4 % agriculture and fishing;
- 10 % the CFSP;
- 7 % the environment;
- 5,1 % the economic and monetary policy.

Out of the total number of documents disclosed (in full or in part):

- 18,2 % concerned the area of freedom, security and justice;
- 12,3 % agriculture and fishing;
- 11,4 % the CFSP;
- 7,3 % the environment;
- 4,9 % the economic and monetary policy.

III. APPLICATION OF EXCEPTIONS TO THE RIGHT OF PUBLIC ACCESS

Full refusals

Initial stage

With regard to initial requests, the grounds for refusal most frequently invoked in 2011 were as follows (% of the total number of refusals in brackets) :

- protection of the decision-making process¹⁰ (40,9 %);
- protection of the public interest with regard to international relations¹¹ (21,2 %);
- protection of the public interest with regard to public security¹² (8,9 %);
- protection of the public interest with regard to defence and military matters¹³ (1,4 %);
- protection of the public interest with regard to financial, monetary and economic policy of the Community or of a Member State¹⁴ (1,1 %);
- protection of court proceedings and legal advice¹⁵ (1 %).

In 25,3 % of cases, several grounds for refusal were invoked simultaneously :

- protection of the public interest as regards international relations in conjunction with the protection of the decision-making process of the institution, including negotiations on trade, enlargement, etc. (36,5 %);
- protection of the decision-making process of the institution in conjunction with the protection of the public interest as regards public security and international relations (20,4 %);
- protection of the public interest as regards public security in conjunction with the protection of the public interest as regards international relations (18,8 %).

Confirmatory stage

For confirmatory applications, the grounds for refusal most frequently invoked in 2011 were as follows:

- protection of the public interest with regard to international relations (78,9 %);
- protection of the public interest with regard to public security (15,8 %).

There was only one case where more than one ground for refusal were invoked: the protection of the public interest with regard to international relations in conjunction with the protection of personal data.

Partial release

Where only parts of the requested document are covered by any of the exceptions, its remaining parts are released in conformity with Article 4(6) of the Regulation.

10 Article 4(3) of Regulation 1049/2001.

11 Article 4(1)(a), third indent, of the Regulation.

12 Article 4(1)(a), first indent, of the Regulation.

13 Article 4(1)(a), second indent, of the Regulation.

14 Article 4(1)(a), fourth indent, of the Regulation.

15 Article 4(2), second indent, of the Regulation.

Initial stage

The grounds for partial refusal most frequently invoked at the initial stage in 2011 were (% of the total number of refusals in brackets):

- protection of the decision-making process (38,3 %);
- protection of the public interest with regard to international relations (29,3 %);
- protection of court proceedings and legal advice (5,2 %).

In 19,5 % of cases, several grounds for refusal were invoked simultaneously:

- protection of the public interest as regards international relations in conjunction with the protection of the decision-making process of the institution (53 %);
- protection of the decision-making process in conjunction with the protection of court proceedings and legal advice (24 %).

Confirmatory stage

For the confirmatory applications, the grounds for partial refusal most frequently invoked in 2011 were:

- protection of the public interest with regard to international relations (40 %);
- protection of the decision-making process (13,3 %).

In 33,3 % of the cases, several grounds were invoked. The most frequently invoked combination of grounds was the protection of the public interest as regards international relations in conjunction with the protection of legal advice and court proceedings (50 % of the cases).

IV. KEY DEVELOPMENTS

1. Proposal for a recast of Regulation (EC) No 1049/2001

On 7 May 2008, the Commission submitted a proposal to the Parliament and the Council for a recast of Regulation (EC) No 1049/2001¹⁶ aimed at amending certain provisions of the Regulation, amongst others, to align the provisions of the Regulation with the “Aarhus Regulation”¹⁷ on access to information in environmental matters and of the case law on access to documents.

Moreover, following the entry into force of the Lisbon Treaty on 1 December 2009, it became necessary to bring the Regulation in line with the new Treaty provisions, notably to extend the public right of access to documents of all the Union’s institutions, bodies, offices and agencies (Art. 15(3) of TFEU). The Commission therefore submitted a second proposal to that effect to the Council and the European Parliament on 21 March 2011¹⁸.

The European Parliament adopted its position at first reading at its plenary session on 15 December 2011¹⁹. This position incorporates the contents of the proposal for the alignment of Regulation (EC) No 1049/2001 with the Lisbon Treaty into the Parliament’s report on the initial proposal for a Recast of that Regulation.

In the Council, the Working Party on Information discussed the 2011 proposed revisions of Regulation (EC) No 1049/2001 at a number of meetings and agreed on a compromise text on 16 September 2011²⁰.

2. Interinstitutional Committee on Access to Documents

An interinstitutional committee has been set up under Article 15(2) of Regulation (EC) No 1049/2001 with a view to examine best practice, address possible conflicts and discuss future developments on public access to documents. The Committee was constituted at political level in March 2002, but meets more frequently at technical level. Thus, the departments of the European Parliament, the Council, and the Commission with responsibility for implementing Regulation (EC) No 1049/2001 met five times in 2011 to compare and exchange practical experience in applying the Regulation, also in the light of the recent case law on public access to documents.

3. Visit of the Ombudsman at the General Secretariat of the Council

On 17 May 2011, Mr Diamandouros, European Ombudsman, was invited by the Directorate General F, Transparency and Access to Documents Unit of the General Secretariat of the Council to speak at a half-day internal seminar about his experience in dealing with the Council.

16 COM(2008) 229 final. See also Council Annual Report on public access to documents in 2008, pp. 15 16.

17 Regulation (EC) No 1367/2006, see Annex 3.

18 COM (137) final.

19 See doc. 18436/11.

20 See doc. 14549/11.

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

This chapter reviews complaints submitted to the European Ombudsman as well as rulings given by the Courts of the European Union in 2011 in the area covered by Regulation (EC) No 1049/2001.

1. Complaint lodged with the European Ombudsman

Complaint 1170/2009/KM closed following a friendly solution proposal

In 2011, complaint 1170/2009/KM was the only complaint pending before the European Ombudsman concerning an alleged case of maladministration as regards the application of Regulation (EC) No 1049/2001 by the Council²¹. The complaint had been introduced on 30 April 2009 and was closed by Ombudsman's decision of 19 December 2011²², following the Council's reply to a proposal for a friendly solution in accordance with Article 3(5) of the Statute of the European Ombudsman²³.

In his letter of 27 May 2011, setting out the proposal for a friendly solution, the Ombudsman asked the Council to consider granting the complainant access to the requested document in its entirety, unless it could duly establish why parts of the document merit protection in accordance with Regulation (EC) No 1049/2001, taking into account the relevant case-law of the Court of Justice. The Ombudsman also invited the Council to consider improving its communications with the citizens who request access to a document by (a) informing them of time limit expiry dates, and (b) informing them in good time and, in any event, before the expiry of any relevant time limit, of the remedies open to them in case of total or partial refusal.

In its reply to the Ombudsman dated 15 July 2011, the Council indicated that, following a re examination of the requested document, it had concluded that given, in particular, the time which had elapsed since its decision to reject the applicant's confirmatory request, the exceptions invoked for refusing full access to the requested document (an opinion of the Council's Legal Service) were no longer applicable. The Council had therefore decided to forward a publicly available version of the Document to the complainant.

As regards the procedural aspects mentioned in the Ombudsman's letter, the Council replied that in the case of the extension of time-limits under Regulation (EC) No 1049/2001, it was ready to indicate, in the letters extending the time limit for the Council to reply to both initial and confirmatory requests, the actual date on which the extended time limit expired.

In reply to the Ombudsman's suggestion that the Council should provide applicants with information in good time and, in any event, before the expiry of any relevant time-limit, on the legal remedies available to them in case of total or partial refusal, the Council stated that it would be unusual to indicate legal remedies concerning a future act to be adopted in an acknowledgment of receipt or a holding letter sent to the applicant. An indication of legal remedies in a holding letter might lead the recipient wrongly to believe that the institution was considering rejecting his application even before having completed its examination of the request.

21 This complaint was summarised in the Council's annual report on access to documents in 2009, p. 18, to which the reader is referred.

22 See document 7158/12.

23 See documents 11285/11 and 11286/11.

Finally, the Council drew the Ombudsman's attention to the fact that the Council has a record of providing explicit confirmatory replies to applicants within the statutory time limits, together with information on the possible legal remedies in cases where the reply is negative or partially negative. For these reasons, the Council did not see any legal or any pressing practical reason for making arrangements for an event where it would fail to reply, in the future, within the time-limits laid down in Regulation (EC) No 1049/2001.

Own-initiative inquiry (OI/3/2011/KM) concerning the Council of the European Union

Following his inquiry into the above-mentioned complaint 1170/2009/KM, the Ombudsman sent the Council a letter on 29 June 2011 by which he opened an own initiative inquiry concerning the Council. In this letter, the Ombudsman pointed out that the average time for the processing of confirmatory applications for public access to documents generally exceeded the time limit of 15 working days foreseen in Article 8(1) of Regulation (EC) No 1049/2001, and asked the Council to explore the possibilities for shortening the period of time needed to reply to such requests.

On 3 October 2011, the Council sent the Ombudsman a preliminary reply to his above-mentioned letter, in which it pointed out that the examination of confirmatory requests by the Council followed a series of procedural steps, including the involvement of the Working Party on Information, Coreper and the Council itself. Against that background, the relevant services of the General Secretariat of the Council, were therefore examining various practical and organisational solutions with a view to reduce the time needed for the processing of confirmatory applications.

In its final reply to the Ombudsman sent on 30 January 2012²⁴, the Council enumerated a series of general measures aiming at improving the overall quality of the service provided by the General Secretariat when dealing with initial requests for access to Council documents, and specific measures taken in order to shorten the procedures for the examination of the confirmatory applications by the Council and its preparatory bodies.

The Council did, however, not exclude that it might also in the future have recourse to the possibility, foreseen in Regulation (EC) No 1049/2001, of extending the time limit for the processing of such applications by 15 working days in exceptional cases. It referred in that respect to its wish to improve the overall quality of its services through thorough analysis of requests for public access to documents as well as its obligation to ensure the legal consistency of the replies given to confirmatory applications.

2. Legal action

In 2011 the General Court delivered two decisions regarding actions brought against Council against its refusal under Regulation (EC) No 1049/2001 to give public access to documents.

First, by judgment of 22 March 2011 in Case T-233/09 (*Access Info Europe vs. Council*), the General Court (Third Chamber) annulled the Council's decision of 26 February 2009 by which the latter had refused to grant full public access to a preparatory document (16338/08) that contained proposals for amendments of the Commission's proposal for a recast of Regulation (EC) No 1049/2001.

The question of the interpretation of Article 4(3) of Regulation (EC) No 1049/2001 in respect of Council documents relating to legislative acts on which discussions are still ongoing and which contain delegations' positions has been raised for the first time before the Courts of the European Union.

24 See document 5265/12.

Given the possible implications of this ruling for the Council's practice, the Council decided to appeal the judgment of the General Court before the Court of Justice²⁵.

The appeal case (C-280/11 P Council vs. Access Info Europe) is currently pending before the Court of Justice.

Secondly, by Order of 6 September 2011 in Case T-452/10, the General Court dismissed an action brought against the Council by ClientEarth for the annulment of the Council's decision of 26 July 2010 by which it had refused full public access to document 6865/09.

In its order, the General Court found that the complainant did not comply with the requirement laid down in Article 19 of the Statute of the Court of Justice of the European Union to be properly represented before the Courts of the European Union, insofar as the lawyer representing the complainant before the General Court - one of ClientEarth's seven trustees - was not sufficiently detached from the legal person which he was representing. The General Court concluded that, since the application had not been brought in accordance with Article 19 of the Statute and, consequently, with Article 43(1) of the Rules of Procedure of the Court of Justice, the action had to be dismissed as manifestly inadmissible. ClientEarth brought an appeal against the General Court's Order before the Court of Justice, which is currently pending.

New legal action brought against the Council for the annulment of its decision refusing public access to documents

By an application registered with the General Court on 16 June 2011 and notified to the Council on 11 July 2011, Mr Leonard Besselink brought an action before the General Court for the annulment, pursuant to Article 263 TFEU, of the Council's decision of 31 March 2011, to refuse full public access to document 9689/10 (RESTREINT UE), a note from the Presidency containing a draft Council Decision authorising the Commission to negotiate the Accession Agreement of the European Union to the European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR). The case is currently pending before the General Court.

Actions for annulment pending before the General Court

In addition to the two above-mentioned cases, three cases challenging the legality of decisions by the Council refusing public access pursuant to Regulation (EC) No 1049/2001 are currently pending before General Court, which were dealt with in the Council's previous reports on public access to documents in 2009²⁶ and 2010²⁷, to which the reader is referred.

25 See document 9491/11.

26 T-465/09 *Jurašinović v. Council and T 529/09 Sophie In't Veld v. Council*. See the 2009 annual Council report on public access to documents, page 19.

27 T-63/10 *Jurašinović v. Council*. See the 2010 annual Council report on public access to documents, page 23.

VI. FINAL REMARKS

In 2011, the General Secretariat received fewer requests than in previous year (2 116 against 2 764 in 2010), although there was an increase in the total number of requested documents (6 %). This is because some of the requests received in 2011 concerned a very large number of documents, sometimes more than 1 000 through a single request.

The General Secretariat reduced the processing time of the initial requests which averaged 16 working days in 2011, against 17 days in 2010. Over the course of the year 2011, it extended the time limit for examining initial requests in 24,2 % of cases, whereas in 2010 this figure was 28 %.

Thorough examination of initial requests over the previous years has lead to a significant decrease in the number of confirmatory applications, from a peak of 2,4 % in 2005 to roughly 1 % of the number of initial requests during recent years. In 2011, there were 27 confirmatory requests which correspond to 1,3 % of initial requests.

It is recalled that the contribution made by the Working Party on Information to the processing of confirmatory applications and the examination of complaints to the Ombudsman is essential. The Working Party met 13 times in 2011. Its main tasks include examining documents for which a confirmatory application has been made, and examining and finalising the Council's 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.

STATISTICS ON PUBLIC ACCESS TO COUNCIL DOCUMENTS

SITUATION ON 31/12/2011

1. Number of applications pursuant to Regulation (EC) No 1049/2001

2007	2008	2009	2010	2011
1 964	2 238	2 666	2 764	2 116

2. Number of documents requested by initial applications

2007	2008	2009	2010	2011
7 809	10 732	8 444	9 188	9 641

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

2007	2008	2009	2010	2011
6 123	9 215	6 453	7 847	8 506
partially/entirely 945/5 178	partially/entirely 1 540/7 675	partially/entirely 1 117/5 336	partially/entirely 1 369/6 478	partially/entirely 1 103/7 403

4. Number of confirmatory applications

2007	2008	2009	2010	2011
18	25	33	28	27

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

2007	2008	2009	2010	2011
30	74	351	181	59
15 partially/entirely 9/6	43 partially/entirely 19/24	88 partially/entirely 26/62	118 partially/entirely 80/38	40 partially/entirely 15/25

6. Rate of document released for the procedure as a whole²⁸

2007		2008		2009		2010		2011	
66,7 %	78,9 %	71,8 %	86,4 %	63,9 %	77,5 %	70,9 %	86,7 %	77 %	88,6 %

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

2007		2008		2009		2010		2011	
1 010 217	724 338 (71,7 %)	1 195 509	883 748 (73,9 %)	1 371 608	1 039 973 (75,8 %)	1 545 754	1 163 489 (75,3 %)	1 729 944	1 337 933 (77,3 %)

²⁸ Based on documents released entirely (left column) or entirely + partially (right column).

8. Professional profile of the applicants (initial applications)

		2007		2008		2009		2010		2011	
Civil society	Environmental Lobbies	14,2 %		18,3 %		17,2 %		0,8 %	18,5 %		0,2 %
	Other groups of interests							4,7 %			6,2 %
	Industrial/ Commercial Sector							11,2 %			7,8 %
	NGOs							1,8 %			2,7 %
Journalists		2,9 %		2,8 %		2,7 %		2,6 %		3,3 %	
Lawyers		8,8 %		9,5 %		11,4 %		10,1 %		10 %	
Academic world	University Research	38,2 %	40 %	32,6 %	33,7 %	32,7 %	33,7 %	32,5 %	33,7 %	35,7 %	37,6 %
	Library	1,8 %		1,1 %		1 %		1,2 %		1,8 %	
Public authorities (non-EU institutions, third-country representatives, etc.)		6,1 %		7,6 %		4,1 %		5,6 %		5,4 %	
Members of the European Parliament and their assistants		1,3 %		1,8 %		1,4 %		1,1 %		0,9 %	
Others		13,3 %		14,7 %		15,9 %		14,6 %		12,3 %	
Undeclared professional origin		13,2 %		10,9 %		12,6 %		13,3 %		13,5 %	

9. Professional profile of the applicants (confirmatory applications)

		2007		2008		2009		2010		2011	
Civil society	Environmental Lobbies	0 %		21 %		15,6 %		0 %	23,1 %	0 %	15,5 %
	Other groups of interests							19,2 %		3,9 %	
	Industrial/ Commercial Sector							0 %		7,7 %	
	NGOs							3,9 %		3,9 %	
Journalists		18,7 %		10,5 %		6,2 %		7,7 %		11,5 %	
Lawyers		12,5 %		10,5 %		18,8 %		11,5 %		15,4 %	
Academic world	University Research	50 %	56,2 %	31,6 %	31,6 %	46,9 %	46,9 %	42,3 %	42,3 %	34,6 %	34,6 %
	Library	6,2 %		0 %		0 %		0 %			
Public authorities (non-EU institutions, third-country representatives, etc.)		6,3 %		0 %		0 %		0 %		0 %	
Members of the European Parliament and their assistants		0 %		5,3 %		3,1 %		0 %		3,8 %	
Others		6,3 %		5,3 %		3,1 %		7,7 %		11,5 %	
Undeclared professional origin		0 %		15,8 %		6,3 %		7,7 %		7,7 %	

10. Geographical spread of the applicants (initial applications)

	2007	2008	2009	2010	2011	
Belgium	26,4 %	31 %	28,2 %	29,3 %	30,5 %	
Bulgaria	0,1 %	0,2 %	0,3 %	0,2 %	0,4 %	
Czech Republic	1,4 %	0,9 %	1,2 %	1,1 %	1 %	
Denmark	1,1 %	1,2 %	1 %	1,6 %	1 %	
Germany	16 %	14,5 %	14,8 %	13,9 %	14,5 %	
Estonia	0 %	0 %	0,1 %	0,1 %	0 %	
Greece	1,3 %	0,7 %	0,8 %	0,8 %	0,7 %	
Spain	5 %	6,4 %	5,9 %	5,5 %	3,5 %	
France	7,1 %	7 %	8 %	7,5 %	7,7 %	
Ireland	0,6 %	0,6 %	0,9 %	0,4 %	0,7 %	
Italy	6 %	5,9 %	4,7 %	5,4 %	6,3 %	
Cyprus	0,3 %	0,2 %	0,3 %	0 %	0,2 %	
Latvia	0 %	0,2 %	0,2 %	0,1 %	0,2 %	
Lithuania	0,1 %	0,1 %	0,2 %	0,3 %	0,1 %	
Luxembourg	1 %	1,5 %	1,8 %	1,3 %	1,3 %	
Hungary	0,7 %	0,9 %	1 %	0,7 %	0,8 %	
Malta	0,3 %	0,2 %	0,3 %	0,4 %	0,2 %	
Netherlands	5,8 %	5,7 %	5,7 %	4,8 %	7,6 %	
Austria	1,7 %	1,3 %	1,9 %	2,1 %	1,9 %	
Poland	1,5 %	1,5 %	1,4 %	2,4 %	1,6 %	
Portugal	0,9 %	0,9 %	0,8 %	1,2 %	0,9 %	
Romania	1,1 %	0,6 %	1,2 %	1 %	0,2 %	
Slovenia	0,4 %	0,2 %	0,4 %	0,3 %	0,2 %	
Slovakia	0,3 %	0,3 %	0,6 %	0,7 %	0,3 %	
Finland	0,8 %	0,7 %	0,2 %	0,5 %	0,4 %	
Sweden	1,8 %	1,8 %	1,8 %	2 %	1,3 %	
United Kingdom	9,5 %	7,4 %	8,7 %	9 %	9,2 %	
Third countries	Candidate countries	1 %	0,4 %	0,3 %	0,3 %	0,5 %
	Others	7 %	7,3 %	6,5 %	6,5 %	5,9 %
Non specified	0,8 %	0,4 %	0,8 %	0,6 %	0,9 %	

11. Geographical spread of the applicants (confirmatory applications)

	2007	2008	2009	2010	2011	
Belgium	37,5 %	30 %	22,6 %	28 %	23,1 %	
Bulgaria	0 %	0 %	0 %	0 %	0 %	
Czech Republic	6,3 %	5 %	0 %	4 %	0 %	
Denmark	0 %	0 %	0 %	0 %	3,9 %	
Germany	6,2 %	20 %	25,8 %	20 %	19,2 %	
Estonia	0 %	0 %	0 %	0 %	0 %	
Greece	0 %	0 %	0 %	0 %	0 %	
Spain	0 %	5 %	9,7 %	4 %	3,8 %	
France	6,2 %	5 %	6,4 %	4 %	7,7 %	
Ireland	0 %	0 %	0 %	0 %	0 %	
Italy	6,2 %	5 %	6,4 %	4 %	7,7 %	
Cyprus	0 %	0 %	0 %	0 %	0 %	
Latvia	0 %	0 %	0 %	0 %	0 %	
Lithuania	0 %	0 %	0 %	0 %	0 %	
Luxembourg	0 %	0 %	3,2 %	0 %	0 %	
Hungary	0 %	0 %	0 %	0 %	0 %	
Malta	0 %	0 %	0 %	0 %	0 %	
Netherlands	6,3 %	10 %	6,5 %	4 %	7,7 %	
Austria	0 %	0 %	0 %	0 %	0 %	
Poland	0 %	0 %	0 %	4 %	0 %	
Portugal	0 %	5 %	0 %	0 %	0 %	
Romania	0 %	0 %	0 %	0 %	0 %	
Slovenia	0 %	0 %	0 %	0 %	0 %	
Slovakia	6,3 %	0 %	0 %	0 %	0 %	
Finland	0 %	0 %	0 %	0 %	0 %	
Sweden	0 %	0 %	0 %	8 %	0 %	
United Kingdom	25 %	5 %	9,7 %	16 %	23,1 %	
Third countries	Candidate countries	0 %	0 %	0 %	4 %	0 %
	Others	0 %	0 %	9,7 %	0 %	0 %
Non specified	0 %	10 %	0 %	0 %	0 %	

12. Field

	2007	2008	2009	2010	2011
Agriculture, Fisheries	6,8 %	5,7 %	7,3 %	3,9 %	3,5 %
Internal Market	2,9 %	3,4 %	7,7 %	7,9 %	8 %
Research	0,4 %	0,1 %	0,5 %	0,5 %	0,4 %
Culture	0,5 %	0,3 %	0,3 %	0,2 %	0,2 %
Education/Youth	1,1 %	0,5 %	0,6 %	1,1 %	0,4 %
Industry	0,3 %	0,7 %	0,6 %	0,1 %	0,1 %
Competitiveness	1,1 %	2,6 %	1,9 %	1,5 %	1,4 %
Energy	2,1 %	2 %	3,5 %	0,9 %	2,1 %
Transport	3 %	2,5 %	1,9 %	2,5 %	1,5 %
Environment	8,2 %	10 %	8,6 %	10,7 %	9,1 %
Health and Consumer Protection	2,1 %	1,9 %	8,1 %	5,6 %	3,6 %
Economic and Monetary Policy	2,2 %	2,6 %	2,6 %	4,4 %	5,9 %
Tax Questions – Fiscal Issues	2,4 %	6,3 %	7,6 %	7,5 %	12,5 %
External Relations – CFSP	18,1 %	16,2 %	12,2 %	14,4 %	12,8 %
Civilian Protection	0,6 %	0,2 %	0,2 %	0,1 %	0 %
Enlargement	1 %	0,7 %	1,4 %	0,8 %	1 %
Defence and Military matters	6 %	3,4 %	4,6 %	4 %	2,2 %
Assistance for Development	0,2 %	0,1 %	0,3 %	0,2 %	0,1 %
Regional Policy and Economical/ Social Cohesion	0,1 %	0 %	0 %	0 %	0,1 %
Social Policy	1,9 %	3 %	3,4 %	4 %	2,7 %
Area of freedom, security and justice	26,7 %	25,4 %	15,3 %	14 %	19,5 %
Legal questions	3,5 %	3,5 %	2,7 %	2,6 %	3,1 %
Functioning of the institutions	1,1 %	0,9 %	0,8 %	2,1 %	2,4 %
Financing of the Union (Budget, Statute)	0,2 %	0,1 %	0,2 %	0,1 %	0,2 %
Transparency	0,3 %	0,1 %	0,3 %	0,3 %	0,3 %
General policy questions	0,4 %	0,6 %	0,5 %	1 %	0,6 %
Parliamentary Questions	5,4 %	4,4 %	4,1 %	5,3 %	3 %
Various	0,4 %	0,7 %	0,5 %	0,6 %	0,2 %

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

	2007		2008		2009		2010		2011	
	#	%	#	%	#	%	#	%	#	%
Protection of public interest as regards public security	219	13,3 %	92	6,4 %	109	5,6 %	92	7 %	93	8,9 %
Protection of public interest as regards defence and military matters	38	2,3 %	35	2,4 %	67	3,5 %	25	1,9 %	15	1,4 %
Protection of public interest as regards international relations	249	15,1 %	401	27,7 %	442	22,9 %	319	24,2 %	221	21,2 %
Protection of public interest as regards the financial, monetary or economic policy of the Community or a Member State	0	0 %	0	0 %	0	0 %	6	0,5 %	11	1,1 %
Protection of privacy and the integrity of the individual (protection of personal data)	4	0,2 %	7	0,5 %	5	0,3 %	5	0,4 %	2	0,2 %
Protection of commercial interests of a natural or legal person, including intellectual property	1	0,1 %	0	0 %	1	0 %	0	0 %	0	0 %
Protection of court proceedings and legal advice	14	0,8 %	22	1,5 %	8	0,4 %	11	0,8 %	10	1 %
Protection of the purpose of inspections, investigations and audits	0	0 %	2	0,1 %	1	0 %	4	0,3 %	0	0 %
Protection of the Institution's decision-making process	627	38 %	519	35,9 %	756	39,1 %	436	33,1 %	426	40,9 %
Several reasons together	498	30,2 %	367	25,4 %	545	28,2 %	417	31,7 %	264	25,3 %
Document not held by the Council/Other author	0	0 %	1	0,1 %	0	0 %	1	0,1 %	0	0 %

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

	2007		2008		2009		2010		2011	
	#	%	#	%	#	%	#	%	#	%
Protection of public interest as regards public security	1	6,7 %	5	16,1 %	20	7,6 %	24	38,1 %	3	15,8 %
Protection of public interest as regards defence and military matters	0	0 %	0	0 %	0	0 %	0	0 %	0	0 %
Protection of public interest as regards international relations	3	20 %	24	77,4 %	38	14,5 %	35	55,5 %	15	78,9 %
Protection of public interest as regards the financial, monetary or economic policy of the Community or a Member State	0	0 %	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	0	0 %	0	0 %	0	0 %	0	0 %	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	0	0 %	2	6,5 %	0	0 %	1	1,6 %	0	0 %
Several reasons together	11	73,3 %	0	0 %	205	77,9 %	3	4,8 %	1	5,3 %
Document not held by the Council/other author	0	0 %	0	0 %	0	0 %	0	0 %	0	0 %

15. Reasons for refusal in the case of partial access (replies provided by the General Secretariat of the Council at the initial stage)

	2007		2008		2009		2010		2011	
	#	%	#	%	#	%	#	%	#	%
Protection of public interest as regards public security	0	0 %	0	0 %	42	3,7 %	56	4,1 %	49	4,4 %
Protection of public interest as regards defence and military matters	0	0 %	0	0 %	2	0,2 %	4	0,3 %	1	0,1 %
Protection of public interest as regards international relations	0	0 %	20	1,3 %	21	1,9 %	164	12 %	323	29,3 %
Protection of public interest as regards the financial, monetary or economic policy of the Community or a Member State	0	0 %	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 %	10	0,9 %	57	4,2 %	35	3,2 %
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	0	0 %	1	0,1 %	37	3,3 %	111	8,1 %	58	5,2 %
Protection of the purpose of inspections, investigations and audits	0	0 %	0	0 %	0	0 %	0	0 %	0	0 %
Protection of the Institution's decision-making process	1	0,1 %	2	0,1 %	202	18,1 %	707	51,6 %	422	38,3 %
Several reasons together	975	99,9 %	1.517	98,5 %	803	71,9 %	270	19,7 %	215	19,5 %
Document not held by the Council/Other author	0	0 %	0	0 %	0	0 %	0	0 %	0	0 %

16. Reasons for refusal in the case of partial access (replies provided by the General Secretariat of the Council at the confirmatory stage)

	2007		2008		2009		2010		2011	
	#	%	#	%	#	%	#	%	#	%
Protection of public interest as regards public security	0	0 %	0	0 %	0	0 %	0	0 %	1	6,7 %
Protection of public interest as regards defence and military matters	0	0 %	0	0 %	0	0 %	0	0 %	0	0 %
Protection of public interest as regards international relations	0	0 %	0	0 %	0	0 %	21	26,2 %	6	40 %
Protection of public interest as regards the financial, monetary or economic policy of the Community or a Member State	0	0 %	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 %	1	1,3 %	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	0	0 %	0	0 %	3	11,6 %	0	0 %	1	6,7 %
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	0	0 %	0	0 %	7	26,9 %	12	15 %	2	13,3 %
Several reasons together	9	100 %	19	100 %	16	61,5 %	46	57,5 %	5	33,3 %
Document not held by the Council/other author	0	0 %	0	0 %	0	0 %	0	0 %	0	0 %

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

	2007	2008	2009	2010	2011
For the initial applications	13 (1 964 closed appl.)	16 (2 238 closed appl.)	14 (2 666 closed appl.)	17 (2 764 closed appl.)	16 (2 116 closed appl.)
For the confirmatory applications ²⁹	28 (18 closed appl.)	25 (25 closed appl.)	26 (33 closed appl.)	28 (28 closed appl.)	29 (27 closed appl.)
Ponderated average (initial + confirmatory)	13,14	16,1	14,15	17,11	16,16
Ombudsman ²⁹		44		50	32

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

	2007	2008	2009	2010	2011
Initial applications	386 of 1964, being 19,7% of the applications	497 of 2238, being 22,2% of the applications	536 of 2666, being 20,1% of the applications	773 of 2764, being 28% of the applications	513 of 2116, being 24,2% of the applications
Confirmatory applications ²⁹	14 [of 18]	20 [of 25]	32 [of 33]	26 [of 28]	23 [of 27]

²⁹ 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.

General Secretariat of the Council

Council annual report on access to documents - 2011

2012 — 31 pp. — 21 x 29.7 cm

ISBN 978-92-824-3655-4

doi:10.2860/58503

ISSN 1830-396X

QC-AF-12-001-EN-C



CONSILIUM

Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË
Tel. +32 22816111

www.consilium.europa.eu

doi:10.2860/58503

ISBN 978-92-824-3655-4



9 789282 436554

RS 017/2012