



EEB

European
Environmental
Bureau

Using access to information requests as an advocacy tool

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Why filing A2I requests?

1. Opening the gates of the black box: Council documents
 - positions of Member States
 - trilogues negotiations
2. Ex-post: understand how a decision has been made and the dynamics for **future advocacy**.
3. **Pressure tool**: ensure that European Institutions know that civil society is watching what happens, even behind closed doors.
4. **Basis for litigation**: refusal of access to documents requests can be challenged and become an advocacy opportunity to question lack of transparency in front of the Ombudsman/the CJEU and cause a change in the framework/practice.



Success story: getting access into Council Working Party documents

Council Working Parties:

- Made of permanent representations' attachees
- Preparatory work and discussion of files
- Opportunity to get an idea of each Presidency and Member States' positions and target our advocacy

Council register: some documents "ST" are published on the Council register but the documents exchanged like are "WK" coded.

→ ask for a list (one published every quarter/semester) then for specific documents.

→ ask for all WK documents related to a particular file.



Access to EU docs: AsktheEU.org



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Get answers from EU Institutions

AskTheEU.org is an online platform for citizens to send access to documents requests directly to EU institutions.

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Legal basis

Exceptions :

- Undermine the protection of public interest (security, defence, international relations...) or privacy/integrity of the individual
- Undermine the protection of commercial interest, court proceedings, **legal advice** unless **overriding public interest**
- Undermine the institution's decision-making (e.g. opinions for internal use) unless **overriding public interest**

31.5.2001

EN

Official Journal of the European Communities

L 145/43

REGULATION (EC) 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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

this Regulation as regards documents concerning the activities covered by those two Treaties.

Having regard to the Treaty establishing the European Community, and in particular Article 255(2) thereof,

- (6) Wider access should be granted to documents in cases where the institutions are acting in their legislative capacity, including under delegated powers, while at the same time preserving the effectiveness of the institutions' decision-making process. Such documents should be made directly accessible to the greatest possible extent.

Having regard to the proposal from the Commission ⁽¹⁾,

Acting in accordance with the procedure referred to in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) The second subparagraph of Article 1 of the Treaty on European Union enshrines the concept of openness, stating that the Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

- (7) In accordance with Articles 28(1) and 41(1) of the EU Treaty, the right of access also applies to documents relating to the common foreign and security policy and to police and judicial cooperation in criminal matters. Each institution should respect its security rules.

- (2) Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system. Openness contributes to strengthening the principles of democracy and respect for fundamental rights as laid down in Article 6 of the EU Treaty and in the Charter of Fundamental Rights of the European Union.

- (8) In order to ensure the full application of this Regulation to all activities of the Union, all agencies established by the institutions should apply the principles laid down in this Regulation.

- (9) On account of their highly sensitive content, certain documents should be given special treatment. Arrangements for informing the European Parliament of the content of such documents should be made through interinstitutional agreement.



Legal basis

Article 4

Access to environmental information

1. Each Party shall ensure that, subject to the following paragraphs of this Article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:

- (a) without an interest having to be stated;
- (b) in the form requested unless:
 - (i) it is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or
 - (ii) the information is already publicly available in another form.

Aarhus Convention: article 4 on access to environmental information

Article 3

Access to environmental information upon request

1. Member States shall ensure that public authorities are required, in accordance with the provisions of this Directive, to make available environmental information held by or for them to any applicant at his request and without his having to state an interest.

2. Subject to Article 4 and having regard to any timescale specified by the applicant, environmental information shall be made available to an applicant:

- (a) as soon as possible or, at the latest, within one month after the receipt by the public authority referred to in paragraph 1 of the applicant's request; or
- (b) within two months after the receipt of the request by the public authority if the volume and the complexity of the information is such that the one-month period referred to in (a) cannot be complied with. In such cases, the applicant shall be informed as soon as possible, and in any case before the end of that one-month period, of any such extension and of the reasons for it.

Directive 2003/4/EC on Access to environmental information: article 3



What you need to know to file a request

1. Create an account on AsktheEU.org.
 2. Identify the Institution/body you want to send your request to.
 3. Write and send your request :
 - Identify the specific document or ask more broadly
 - 24 official languages of the EU but the template provided by the platform is in English, French, German and Spanish
- + if you ask for environmental information, the platform recommends mentioning **the Directive 2003/4 on Access to environmental information**



Processing the request

Time-limit : 15 working days with a possible extension of 15 working days with detailed reasons (large number of documents, consultations...)

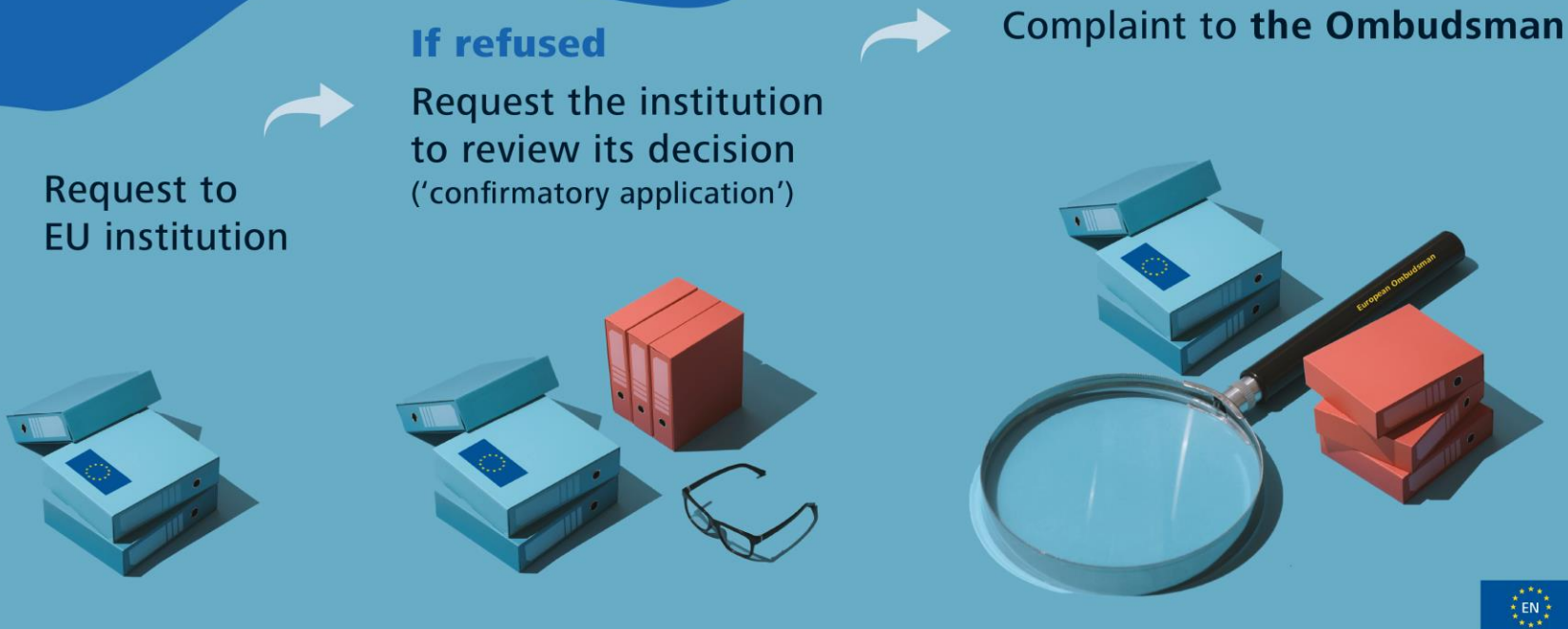
Response : notification by email

Processing of each request **public** (request, delays, documents provided).



What if the request is denied ?

Public access to EU documents
and the role of the European Ombudsman



Time limits :

- Confirmatory applications “appeal” : 15 working days after refusal or silence
- Complaint to the Ombudsman : 2 years after refusal of confirmatory application or silence





De Capitani case T-163/21

Facts : Refusal of access to Council Working Party documents on the ground that the disclosure would undermine the Council's decision-making process (exception article 4(3) first subparagraph)

Ruling : Access to documents not absolute but general principle of openness and access must be as wide as possible.

- Citizens must be able to exercise their democratic rights and follow the decisions-making and the risk of external pressure must be established with certainty.
- No distinction between Council Working Party documents and those from Trilogues.
- Grounds for refusal must be detailed and evidence identified by the institution (sensitivity, cooperation, difficult negotiation)



De Capitani follow-up

Emilio February 01, 2023



✓ Delivered

Dear Council of the European Union,

Under the right of access to documents as foreseen by art 42 of the EU Charter and art 15 TFEU and implemented by Regulation 1049/2001 I am hereby requesting

1 - a list of Council documents coded as "WK" and diffused in the Working Groups or Coreper in December 2022 / January 2023

2 - the TEXTS of the WK documents diffused in the same period and LINKED TO THE EU LEGISLATIVE PROCEDURES. This second request is submitted by taking in account the CJEU Ruling on case T-163/21 and the art.266 of the TFEU

Best regards

Yours faithfully,

Emilio De Capitani



De Capitani follow-up

	B	C	D	E	F	G	H	I	J	K
61	01/12/2022	GRO	ENERGIE	WK	16744	2022	INIT	MEETING DOCUMENT	Energy Efficiency Directive - Steering note by the Presidency	2021/0203 (COD)
62	01/12/2022	GRO	ENERGIE	WK	16749	2022	INIT	MEETING DOCUMENT	Energy Efficiency Directive - Extract of the 4column table	2021/0203 (COD)
63	01/12/2022	GRO	VTC INFORMELLE QUESTIONS COMMERCIALES	WK	16684	2022	INIT	WORKING DOCUMENT	Anti-coercion instrument – 4-column document	2021/0406 (COD)
64	01/12/2022	GRO	VTC INFORMELLE QUESTIONS COMMERCIALES	WK	16763	2022	INIT	WORKING DOCUMENT	ACI - 4-column document with COM suggestions after the first trilogue	2021/0406 (COD)
65	01/12/2022	GRO	ATT. SERVICES FINANCIERS & UNION BANCAIR	WK	15674	2022	INIT	WORKING DOCUMENT	CSDR: Non-paper from the ECB on netting	2022/0074 (COD)
66	01/12/2022	GRO	ATT. SERVICES FINANCIERS & UNION BANCAIR	WK	16446	2022	INIT	WORKING DOCUMENT	CSDR: Presidency draft compromise text	2022/0074 (COD)
67	01/12/2022	GRO	ATT. SERVICES FINANCIERS & UNION BANCAIR	WK	16446	2022	REV1	WORKING DOCUMENT	CSDR: Presidency draft compromise text- Cleaned version	2022/0074 (COD)
68	01/12/2022	GRO	ATT. SERVICES FINANCIERS & UNION BANCAIR	WK	16540	2022	INIT	WORKING DOCUMENT	CSDR: 01.12.22 working party- Agenda	2022/0074 (COD)
69	01/12/2022	GRO	QUESTIONS DE DROIT CIVIL (RESPONSABILITE	WK	15183	2022	INIT	WORKING DOCUMENT	Directive of the European Parliament and of the Council on liability for defective products- Table of correspondence	2022/0302 (COD)
70	01/12/2022	GRO	QUESTIONS DE DROIT CIVIL (RESPONSABILITE	WK	15189	2022	INIT	WORKING DOCUMENT	Directive of the European Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive)- Table of correspondence	2022/0303 (COD)
71	01/12/2022	GRO	QUESTIONS DE DROIT CIVIL (RESPONSABILITE	WK	16564	2022	ADD1	WORKING DOCUMENT	Directive of the European Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive)- Comments by DE delegation	2022/0303 (COD)
72	01/12/2022	GRO	QUESTIONS DE DROIT CIVIL (RESPONSABILITE	WK	16564	2022	INIT	WORKING DOCUMENT	Directive of the European Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive)- Comments by AT, DK, FI, FR, IT, NL, PT and SI delegations.	2022/0303 (COD)
73	01/12/2022	GRO	QUESTIONS DE DROIT CIVIL (RESPONSABILITE	WK	16575	2022	ADD1	WORKING DOCUMENT	Directive of the European Parliament and of the Council on liability for defective products- Comments by DE delegation on first two Chapters	2022/0302 (COD)
74	01/12/2022	GRO	QUESTIONS DE DROIT CIVIL (RESPONSABILITE	WK	16575	2022	INIT	WORKING DOCUMENT	Directive of the European Parliament and of the Council on liability	2022/0302 (COD)
75	01/12/2022	GRO	JAI CONSEILLERS & EXP. COOPERATION EN M	WK	16241	2022	INIT	NOTE	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF	2022/0167 (COD)
									Proposal for a Directive of the European Parliament and of the	




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Thanks for listening!

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