

# QUESTION TO BRUSSELS:

How should a citizen request EU documents?

November 2009



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## About this Report

This study was researched by Ainhoa Alzola and as written and edited by Ainhoa Alzola and Helen Darbshire, with additional support from Lydia Medland and Zara Rahman. Thanks also to Pia Eberhardt of Corporate Europe Observatory for sharing her research with us. Photo/Design credits: Ylber Mehmedaliu (front and back covers).

**Access Info Europe** is an international human rights organisation, based in Madrid, which works to promote a strong and functioning right of access to information in Europe and globally.

Access Info's goal is for the right of access to information to serve as a tool for defending civil liberties and human rights, for facilitating public participation in decision-making, and for holding governments accountable.



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## Executive Summary and Main Finding

Access Info Europe set out to find out about the internal guidance on access to documents in 16 Directorates General (DGs) of the European Union and the Secretariat General. This search was motivated in response to the leaking in April 2009 of an internal guide from the Directorate General for Trade (the "Vademecum") which revealed that public officials are being given tips on how not to record information and how to avoid providing documents to the public.

Particularly controversial was the guidance on not recording relations with industry lobbyists, such as "don't refer to the great lunch you have had with an industry representative privately or add a PS asking if he/she would like to meet for a drink." The Vademecum was revised in June following protests from civil society – including Access Info, Corporate Europe Observatory and Statewatch - but has retained some of the most problematic provisions, such as those on double reporting:

*The best thing to do is to make two separate documents, i.e. one factual report, and a separate one with the assessment of the report (and possibly suggestions for follow-up). By doing this, we avoid having to "whiten" certain parts of the report, which creates an additional work burden (scrutinise the documents, determine what has to be deleted and justify why it has been deleted ...) and which always carries a risk of confirmatory action, or even recourse to the Ombudsman or the Court (who may ultimately find that the invocation of exception grounds was not justified and even order the deleted parts to be disclosed ...)*

Concerned to know whether other DGs have such internal guidance, in September 2009 Access Info's research team filed requests with 16 DGs asking simply for copies of any documents giving staff guidance on how to handle access to documents requests. Access Info did this by filing requests for documents, exercising our right under Regulation 1049/2001 on Public Access to European Parliament, Council and Commission Documents.

This report is based on the responses from the 17 bodies (16 DGs plus the SG), including the internal guidelines provided to us by eight DGs and by the Secretariat General. It is also about the experience of the members of the Access Info research team filing requesting for information and about how the right of access to documents in Brussels feels from a citizen's perspective.

The good news is that we found that not one of the internal guidance notes received has the scale of problems of the DG Trade Vademecum. Only DG Competition told us that they have a guide but refused to provide it, so we were not able to analyse its content. For the eight (8) DGs which provided guidance, Access Info identified some issues to do with the varying quality and content of the internal guidelines and the fact that they are not all completely up to date, but on the whole the internal guidelines seemed well intentioned and designed to help officials handle requests for documents rapidly and appropriately.

Apart from that, the biggest concern with the internal guides received is that public officials handling access to documents requests do not seem to be given guidance on the latest jurisprudence of the Court of Justice or of the decisions of the Ombudsman, which might help them in taking decisions on giving access to documents (DG Internal Market's documents were a notable exception here).

Have internal guidelines	Do not have internal guidelines	Have guidance but refused to disclose
DG Agriculture and Rural Development	DG Enterprise and Industry	DG Competition
DG Environment	DG Energy and Transport	
DG Information Society and Media	DG Economic and Financial Affairs	
DG Internal Market and Services	DG Regional Policy	
DG Maritime Affairs and Fisheries	DG Education and Culture	
DG Taxation and Customs Union	DG Justice Freedom and Security	
DG Employment	DG Research	
DG Health and Consumers		
EC Secretariat General		

In addition, as will be examined in the report, there seems to be a correlation between lack of internal guidelines and problems handling requests. That said, there were serious problems across the board in submitting requests and in the way these requests were handled. For this reason, we focus in this report on the process of filing requests from the perspective of a European Union citizen as much as on the internal guidelines themselves.

### Key Finding One

**For a member of the public approaching the EU with a request for documents, it is confusing where to begin the request process, and the lack of information may lead to requests being rejected.**

The research team found that, for a member of the public who has not previously filed a request for information from the European Union, it is extremely unclear how they should do this. Different approaches searching with different key words will take users to different forms or e-mail addresses. Our volunteers and researchers who had not filed requests before tested the system and found at least four different ways of filing requests, all of which seemed to them to be correct (two forms on the website of the Secretariat General, the Europe direct enquiry form, and the websites of each DG). At the same time, however, not one of the bodies approached offered more than one way of filing requests, even though Regulation 1049/2001 permits filing in writing, electronically including by e-mail, and by fax.

**Recommendation: Make the access to documents request process accessible and citizen-friendly!** The website of every EU body should have a button on the front page, next to the contact button, entitled "Access to Information" or "Access to Documents" that leads to a page explaining the right of access to documents in general and the procedure for that DG. From there the requestor should be given the option to file a request via an on-line form, in e-mail, by fax or by post. Contact information of the relevant official and a phone number are recommended.

## Key Finding Two

### **Requestors who do not speak English will have a difficult time filing requests for information from the European Union.**

Only the Secretariat General, DG Agriculture, and DG Employment offered request forms in all EU official languages. Worst practices were DG Competition, DG Economic and Financial Affairs, DG Enterprise and Industry, DG Environment, and DG Research whose forms for filing requests are only in English.

Almost all the documents provided to Access Info were in English. We received one internal guide in French (DG Employment) and wrote back asking for it in English, but this request went ignored. [Some of our researchers speak French and so were able to analyse the documents provided].

**Recommendation:** Access Info recommends that, at a minimum, contact information and on-line request forms for each DG should be available in all 21 EU official languages. Greater efforts should be made to provide information in the language preferred by the requestor and to translate documents for disclosure into the three main “working” languages, English, French and German.

## Key Finding Three

### **On-line forms required requestors to disclose information about themselves.**

The only information necessary for processing an access to documents requests is the name, e-mail or address, and the question. Access Info found that requestors were asked for their personal or professional affiliations and were required to squeeze the subject of the request into limited sets of mandatory subjects. DG Research had the most mandatory fields, seeking information about the applicant including the gender, personal/professional affiliation, country of residence and address. Such detailed information is not necessary for processing and answering an access to information request.

**Recommendation:** The Secretariat General should review the on-line application forms to make sure that only basic information is required. If other fields are to be used, they should always be optional and should include a category such as “do not wish to declare” to make plainly clear to requestors that they are under no obligation to supply the information.

## Key Finding Four

### **Half of the DGs failed to issue acknowledgements and only half issued access to documents reference numbers.**

Six DGs failed to issue acknowledgments and only nine (out of 17) issued an official access to documents reference number, indicating serious problems with the receipt and processing of requests.

Those failing to issue acknowledgements were: DG Economic and Financial Affairs, DG Education and Culture, DG Energy and Transport, DG Enterprise and Industry, DG Information Society, DG Justice, Freedom and Security. In addition, DG Agriculture issued an acknowledgement and simultaneously asked for an extension after 14 working days.

The failure to issue the "GESTDEM" reference number which should be given to access to documents requests<sup>1</sup> was by DG Maritime Affairs, DG Employment, DG Justice, DG Research, DG Economic and Financial Affairs, DG Education and Culture, DG Regional Affairs and DG Taxation. In some cases the acknowledgment did not have a reference number although the answer did.

**Recommendation:** Access Info Europe strongly recommends that DGs take steps to improve internal practices and to acknowledge the receipt of all the requests within a short period of time after receipt. Steps should also be taken to ensure that appropriate reference numbers are issued and that the requestor is informed of this number and of the date of registration of the document.

### Key Finding Five

#### **Refusal by three DGs to process the access to documents request.**

Our research found that although the process of requesting information is formally decentralised, some DGs refused to answer requests filed directly with them in what appears to be an entirely illegitimate manner: DG Education and Culture, DG Justice, Freedom and Security, DG Research. These refusals came after 10, 18, and 16 working days respectively. In the case of DG Justice - whose website clearly states that the web form is for requests for information/documentation – the answer stated that the matter was the competence of the Secretariat General. The response to our confirmatory application that there was no "intent" to decline our request but that "*due to a number of unfortunate circumstances, you have read the reply as a denial*" is not of help to the member of the public who has received what clearly appears to be a negative answer.

Similarly unhelpful and inappropriate is DG Research's curt response to our confirmatory application referring us to the SG and stating "*May I ask you in the future to introduce your requests for access to documents via the appropriate application form following the link mentioned above.*"

**Recommendation:** The Secretariat General should take immediate steps to clarify with each DG that the system for making access to documents requests is decentralised and that each body has to receive and process appropriately requests for access to documents. A review of each DG's internal procedures should be accompanied by a review of the contact information and the on-line request forms

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<sup>1</sup> We found references to the GESTDEM system in some of the internal guides we reviewed. For example, in that documents received from DG Environment it says: "GESTDEM [is] a database set up by the SG with a view to ensure the shared management between the SG and ADO Teams." There was no reference to this in the SG's Staff Guide however, so we presume that other documents exist which explain how the system works.

## Key Finding Six

### **Refusal to provide access to internal guidance on access to documents.**

DG Competition refused point blank to give access to their internal guidance arguing that the document had not been formally “validated” and that to disclose it would harm the decision-making process. A decision on our confirmatory application arguing that release of the internal guidelines is in the public interest, particularly when it relates to as important a matter as how public requests for documents are being handled, is pending.

A additional concern with refusals was that Health and Consumers DG gave a partial answer. Some personal data had been blacked out, alleging that, “their disclosure would undermine the privacy and integrity of the individuals”. We note however, that the contact information of the persons dealing with access to information requests is already in the public domain (as part of the SG’s Staff Guide provided to us by DG Environment for example) as it rightly should be. There is a clear public interest in knowing who is responsible for taking decisions on access to documents requests.

**Recommendation:** The EU needs transparency about transparency! The Secretariat General should take immediate steps to ensure that all documents relating to the receipt and processing of access to documents requests are made public. The public should be informed of the criteria being used to take these decisions.

In the case of DG Competition, which seems not to have shared its internal guidance with the experts in the Secretariat General’s office, it seems appropriate that this document be reviewed by the SG’s office.

## Key Finding Seven

### **The SG’s Staff Guide and a number of the internal guides seem to need updating.**

It may therefore be opportune for the SG to conduct a process by which the internal guides are thoroughly reviewed with at least three objectives in mind:

- *to ensure that public officials are fully informed of the rules and procedures on access to documents and that they know about any recent jurisprudence interpreting the access rules;*
- *to ensure that the internal procedures are as streamlined and efficient as possible, learning from the experiences across all DGs to improve response times for acknowledgements and replies;*
- *to integrate the citizen perspective into the internal vision of the systems for receiving and processing access to documents requests.*

**Recommendation:** Access Info recommends that the SG update its internal guidelines and the Citizen’s Guide and also initiate a review of the access to documents procedures and guidelines of each of the DGs, along with a review of their internal procedures to ensure that these conform to the letter and spirit of Regulation 1049/2001 as interpreted by the decisions of the Ombudsman and the jurisprudence of the European Court of Justice. Urgent steps need to be taken to clarify and make more accessible the process for requesting information so that the average EU citizen can find out how to file a request with the EU and be confident of having their request processed and answered.

## 1. INTRODUCTION: OUR QUESTION TO BRUSSELS

In the summer of 2009, while we exchanged letters with DG Trade about its leaked Vademecum, Access Info Europe was curious to know whether other DGs had similar internal guides. So in September we formulated a question for Brussels:

*Dear Sir/Madam*

*I kindly ask you to provide me with copies of any internal documents created or held by your Directorate General which gives guidance to staff (public officials) on how to answer requests for information under 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*

*Please provide the documents in electronic format if possible by sending them to my e-mail account: [helen@access-info.org](mailto:helen@access-info.org) If you need to send the documents by mail, please address them to: Helen Darbishire*

*Access Info Europe  
c/Principe de Anglona 5, 2c  
28005 MADRID, Spain*

*Should you need to clarify this request you can contact me by mail or call me on +34 667 685 319*

*Yours faithfully*

*Ms Helen Darbishire  
Executive Director  
Access Info Europe*

We selected 16 Directorates General (those working in the main policy areas of the EU), and filed our requests on 15 and 16 September 2009. A similar request to the Secretariat General was filed on 25 September 2009.

As the process of filing the requests started, our researchers came across a set of obstacles for the European citizen who wants to have access to EU documents. The research team therefore started to gather information on these as well as on the answers to our question.

This study reports on our findings, focusing on both sets of issues: the process of requesting information from the EU, and the existence and quality of internal guidance in the Directorates General.

### 1.1 Methodology

Access Info's researchers asked the 16 Directorates General (DGs) of the European Commission for copies of any internal documents created or held by them which give guidance to staff under the EU's rules on access to documents, formally known as *Regulation No 1049/2001 regarding Public Access to European Parliament, Council and Commission Documents* (henceforth, Regulation 1049).

The requests were presented in the name of Access Info's Executive Director, Helen Darbishire. The Access Info researchers took action according to the following protocol:

- Search of each DG 's websites and look for electronic request forms or contact e-mails
- Send of request forms or emails, as appropriate, to individual DGs
- Log acknowledgement notifications where received
- Log answers when received
- File confirmatory applications to challenge administrative silence or refusals
- Log responses to confirmatory applications.

### **Our Question to Brussels: Who we asked**

- **DG Agriculture and Rural Development**
- **DG Economic and Financial Affairs**
- **DG Education and Culture**
- **DG Employment, Social Affairs and Equal Opportunities**
- **DG Energy and Transport**
- **DG Enterprise and Industry**
- **DG Environment**
- **DG Health and Consumers**
- **DG Internal Market and Services**
- **DG Justice Freedom and Security**
- **DG Research**
- **DG Competition**
- **DG Information Society and Media**
- **DG Maritime Affairs and Fisheries**
- **DG Regional Policy**
- **DG Taxation and Customs Union**
  
- **European Commission - Secretariat General**

## 2. I HAVE A QUESTION FOR BRUSSELS - WHERE DO I START?

Access Info's research team decided to replicate what might be the typical approach of a European Union citizen or resident who has a question about some aspect of the EU and is not sure where to begin. Our staff and volunteers started either by typing words into Google or going to the website of the European Union (<http://europa.eu/>) and came up with different answers about how to do this:

- The [Europe Direct page "Questions for Europe"](#) which gives various options including an e-mail option which leads to a form called "Enquiry Form" ([http://ec.europa.eu/europedirect/write\\_to\\_us/mailbox/index\\_en.htm](http://ec.europa.eu/europedirect/write_to_us/mailbox/index_en.htm)). One of our team tested this option, with a request about money spent on combating human trafficking. The request received a quick response, within two working days, with some links about where the answer might be found, but did not have an access to documents tracking number and did not appear to have been treated as a formal access to documents request.
- From the main EU website ([http://europa.eu/index\\_en.htm](http://europa.eu/index_en.htm)), the contact button leads to a page entitled "[Contact the European Union](#)" which says: "If you would like to e-mail one of the European institutions or bodies directly, consult the [Contact Guide to the European institutions](#)." and gives another option which is that "If your query or comment concerns a specific area of activity of the European Commission, you can reach the competent department directly by using this [Contact Guide by Commission Activity](#)." From which our researcher concluded that direct contact with each institution was the best answer, using the links on the page: [http://ec.europa.eu/contact/dg\\_en.htm](http://ec.europa.eu/contact/dg_en.htm).
- Another arrived at the [Secretariat General's portal](#), from which the "Contact" button (top menu) leads to a page entitled "[Welcome to the mailbox service of the Commission's Secretariat-General](#)" that lists various information sources although none is clearly for filing information requests, although one option is: "*We will be happy to help you on any matters relating exclusively to the Secretariat-General's activities. To send us your questions, please complete the mailbox form.*" This form is found at [https://ec.europa.eu/dgs/secretariat\\_general/tools/fmb/formulaire.cfm?lang=en](https://ec.europa.eu/dgs/secretariat_general/tools/fmb/formulaire.cfm?lang=en)
- Another went via the [Secretariat General's portal](#), to the "Transparency" button (left menu), and opened a page about "[Openness and Access to Documents](#)" which states: "*This site will guide you in the search for Commission documents. The [Guide](#) explains how to exercise your right of access.*" Clicking on the word "Guide" opens another webpage which gives a link to an application form: <https://ec.europa.eu/transparency/regdoc/fmb/formulaire.cfm?cl=en>

So, there seem to be at least four ways of submitting our requests. The research team then read the Secretariat-General's [Citizen's Guide](#) found in the above links. The Citizen's Guide explains the rules about access to documents relatively clearly, although it could be a little complex for a reader not familiar with legal references. The Citizen's Guide advises members of the public that the "*The Europe Direct unit has been set up to answer*

*questions of a general nature from, the public” (page 6) but that “All requests for access to a document must be sent to the Commission's Secretariat-General or directly to the department responsible” (page 8).*

At the end of the Guide, two web links are given for Europe Direct but neither leads to a currently functioning web page. The Guide gives the postal address of the Secretariat General and an e-mail address ([sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)) but there is no link to the form that is found on the same page as the guide itself.

From the Guide, we concluded that for formal access to documents request, use of the SG's application form or direct contact with the relevant DG is the correct approach. Given that the Guide didn't contain the link to the SG's application form, we were left with a slight doubt and based on the advice in the Guide, Access Info decided that for this investigation into the access to information guidance of each DG, it would be best to approach each DG directly.

To be sure that this was the correct procedure, Access Info also checked the rules. We read Decision C(2001) 3714 of the European Commission of 5 December 2001 amending its rules of procedure) which states clearly:

*All applications for access to a document shall be sent by mail, fax or e-mail to the Secretariat-General of the Commission or to the relevant Directorate-General or department.<sup>2</sup>*

In spite of this very clear language, we later found that not all the Directorates General believe that they have an obligation to answer requests put to them directly.

The remainder of this section examines in detail the obstacles encountered when filing requests for information.

Five main problems were identified:

- lack of different options for how to submit the request;
- key forms are mainly in English;
- use of mandatory fields on on-line forms;
- request for information about the applicant;
- no choice of format for receiving information.

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<sup>2</sup> [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/L\\_345/L\\_34520011229en00940098.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/L_345/L_34520011229en00940098.pdf). Citation is from Article 2 of the Annex entitled: “Detailed rules for the application of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents”

## 2.1 Request Filing Options

The research team searched DGs' websites and looked for information about how to file requests. In the majority of cases, clicking on the "contact" buttons on each website took us directly or in a couple of steps to an online request or enquiry form. We rarely found e-mail addresses, so used the online forms. No DG gave both an e-mail address and had an online request form.

DGs with Web Form	DGs giving an e-mail address
<ul style="list-style-type: none"><li>• <b>Agriculture and Rural Development</b></li><li>• <b>Economic and Financial Affairs</b></li><li>• <b>Employment, Social Affairs and Equal Opportunities</b></li><li>• <b>Energy and Transport</b></li><li>• <b>Enterprise and Industry</b></li><li>• <b>Environment</b></li><li>• <b>European Commission - Secretariat General</b></li><li>• <b>Health and Consumers</b></li><li>• <b>Internal Market and Services</b></li><li>• <b>Justice Freedom and Security Research</b></li><li>• <b>Maritime Affairs and Fisheries</b></li><li>• <b>Taxation and Customs Union</b></li></ul>	<ul style="list-style-type: none"><li>• <b>Competition</b></li><li>• <b>Education and Culture</b></li><li>• <b>Information Society and Media</b></li><li>• <b>Regional Policy</b></li></ul>

## 2.2 Languages

If Brussels wants to get closer to the citizens of Europe, a starting point would be to permit citizens to communicate in their own language, to ask questions in that language, and – wherever possible – to receive information in their language. Regulation 1049/2001 states that "*Applications for access to a document shall be made in any written form, including electronic form, in one of the languages referred to in Article 314 of the EC Treaty.*"<sup>3</sup>

In spite of this, Access Info found that if a European citizen doesn't speak English, then he or she will immediately hit an obstacle: the majority of the information on the websites checked by the survey team was presented information only in English. The Secretariat General and just two DGs – DG Agriculture and DG Employment – provided information request forms in all official languages of the EU.

A speaker of French or German will be able to find much information in their language, but speakers of other languages who don't have a good command of English, French, or German will be struggling. When it comes to requesting information, English again dominates and as the chart below shows, speakers of the languages of the new member states (those who joined on or after 1 May 2004) are particularly poorly served.

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<sup>3</sup> The languages mentioned in Article 314 of the Treaty are: Dutch, French, German, Italian, Czech, Danish, English, Estonian, Finnish, Greek, Hungarian, Irish, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish.

**Five DGs have contact forms only in English:** DG Competition, DG Economic and Financial Affairs, DG Enterprise and Industry, DG Environment and DG Research. Another **six have contact forms in only English, French and German:** DG Education and Culture, DG Energy and Transport, DG Information Society and Media, DG Internal Market and Services, DG Justice Freedom and Security, and DG Taxation and Customs Union.

Some of these however have made a half hearted attempt to comply with the right of access to documents in other languages, which leads to some rather bizarre situations.

A citizen approaching **DG Enterprise and Industry**, for example, will find that the contact form is only in English but that it is mandatory to select which EU language is preferred for the reply (mandatory field); in addition the requestor can opt to indicate whether information can be provided in English, French or German should it not be available in their own language.

A citizen hoping to file a request with **DG Research** will find the following:

- The contact page in English and Danish languages includes links to both a frequently asked questions section and to an enquiry form;
- Speakers of German, Spanish, French, Italian, Dutch, Portuguese, Finnish, Swedish, and Greek will find a similar page in their language but with a link only to the frequently asked questions and not to the enquiry form, so they will hit a dead end;
- Speakers of Bulgarian, Czech, Estonian, Latvian, Lithuanian, Hungarian, Maltese, Polish, Romanian, Slovak and Slovene will find that the contact page has its title only in their language and that the remainder of the page is in English. But they will fare better than the speakers of the languages of old Europe in that at least that page also links to the enquiry form as well.

English	English, French, German	English, French, German plus some other languages	All official EU languages
<ul style="list-style-type: none"> <li>• Competition</li> <li>• Economic and Financial Affairs</li> <li>• Enterprise and Industry</li> <li>• Environment</li> <li>• Research</li> </ul>	<ul style="list-style-type: none"> <li>• Education and Culture</li> <li>• Energy and Transport</li> <li>• Information Society and Media</li> <li>• Internal Market and Services</li> <li>• Justice Freedom and Security</li> <li>• Taxation and Customs Union</li> </ul>	<ul style="list-style-type: none"> <li>• Health and Consumers (Danish, German, French, English, Italian, Maltese, Dutch, Portuguese, Slovenian)</li> <li>• Maritime Affairs and Fisheries (English, Spanish, French, German, Italian, Danish, Greek, Dutch, Portuguese, Finnish, Swedish)</li> <li>• Regional Policy (English, Spanish, French, German, Italian (plus Polish is given as an option but that page is not in Polish))</li> </ul>	<ul style="list-style-type: none"> <li>• Agriculture and Rural Development</li> <li>• Employment, Social Affairs and Equal Opportunities</li> <li>• Secretariat General</li> </ul>

We note that the SG’s Staff Guide states that documents should be supplied in the language of the request wherever possible or in the alternative language of the applicant’s

preference. The SG has prepared model letters which are available in all the official languages of the Community.

Access Info filed all requests in English, so did not test the availability of information in other languages. In a couple of cases (DG Employment, DG Internal Market) we received information in French, but in general all the information was provided to us in English. On 20 October, DG Employment supplied us with its internal guide in French. We wrote back asking for a copy in English. This mail was not acknowledged. On 22 October another official sent us the internal guide again, still in French, and then attempted to recall the message. We did not receive any further correspondence.

➤ ***While the EU continues to have 21 official languages, the contact information and request forms on each DG website should be made available in all of these languages.***

➤ ***Care should be taken to provide information in the applicant's selected alternative language, particularly where this is one of the main "working" languages of the EU, namely English, French or German.***

### 2.3 Mandatory Fields

The on-line request forms on the DG websites all had some mandatory fields, ranging from just the e-mail address in the case of DG Health and Consumers, to almost all the fields including gender and other information about the requestor which was required by DG Research. Only DG Maritime Affairs and Fisheries did not request have any compulsory fields, allowing an absolutely blank form to be submitted.

The common fields, which seem reasonable for an access to documents request were:

- name
- e-mail address
- comment/question

The chart in Annex B shows which bodies required requestors to provide which information.

One issue that posed a particular problem for the Access Info research team was with those DGs who had already anticipated the "subject" of the enquiry, thus limiting the options for requestors.

In some cases there was no subject option fitting with the right of access to documents. For example, DG Justice listed as mandatory options: asylum; immigration; fundamental rights; and citizenship; civil justice; criminal justice; data protection; police and law enforcement; funding programmes. None of these fits easily with access to documents – our researcher selected "fundamental rights".

For example, DG Economic and Financial Affairs had subjects limited to various economic and monetary issues, plus one called "General Public, Request for Paper Copies". Access Info's researchers opted for the latter, even though in fact we wanted electronic copies, but this was the only field available for the General Public.

EU DG	Notes on the Contact Forms
<b>Economic and Financial Affairs</b>	<b>Subject</b> list is limited to various economic and monetary issues; plus one called "General Public, Request for Paper Copies"
<b>Employment</b>	<b>Subject</b> Limited list of 7 categories which includes "other"
<b>Enterprise and Industry</b>	<b>Subject</b> has about 40 categories including "unknown"
<b>Environment</b>	<b>Subject</b> has 35 categories including "General", "Other" and "Unknown/not applicable"
<b>Health and Consumers</b>	<b>Theme:</b> 12 fields which includes "other" and then a free form subject line
<b>Internal Market and Services</b>	<b>Subject:</b> 21 thematic areas indicated
<b>Justice Freedom and Security</b>	<b>Subject can be:</b> asylum immigration fundamental rights and citizenship civil justice criminal justice data protection police and law enforcement funding programmes
<b>Research</b>	<b>Subject:</b> 01 Obtaining Funding under FP7 02 Info on FP7 03 Proposal Submission and Evaluation 04 Legal/Financial aspects of FP (NCPs legal docs guides forms) 05 URF/PDM, PIC, LEAR 06 Policy issues of the FP 07 European research policy and non-FP issues 08 Publications / reports of FP-funded projects 09 Outstanding problem with an ongoing FP project 10 Gender in FP7 11 FP Certification - each then has drop down Programme Area menu with 25 areas listed
<b>Taxation and Customs Union</b>	<b>Policy area:</b> - taxation - customs - other and each is followed but a sub menu

Another curiosity of the on-line forms was the various options in the country field: some DGs listed the EU 27 countries and then gave other options such as "other" or the regions of the world. For those with more comprehensive country listings, we applied the "Montenegro test" and checked to see if a citizen from Montenegro, one of the youngest countries in Europe, could fill in the form. We found that for DG Economy, DG Energy and Transport, neither Serbia nor Montenegro is a separate country, but Yugoslavia still exists. DG Environment still had Yugoslavia instead of Serbia and Montenegro and did not recognise Macedonia. DG Employment on the other hand is maybe anticipating newer

countries and listed just the EU 27 plus Wales! The serious point here is that these lists give the impression of inaccuracy and lack of being updated which does not reflect well on the efficiency and accuracy of the information held by the respective bodies.

➤ **The SG should review the on-line application forms to make sure that only basic information is required and that if other fields are to be used, they should always be optional and should include a category such as "do not wish to declare" to make plainly clear to requestors that they are under no obligation to supply the information.**

## 2.4 Information about the Applicant

It is not permissible to ask applicants for **reasons** for requesting information (Article 6.1 of Regulation 1049/2001). The SG's Staff Guide also makes clear that *"no category of applicants (journalists, MEPs, interest groups) receives preferential treatment as regards the time taken to reply, the way their applications are treated, or the possibilities for appeal."*

It would therefore seem reasonable not to request information about who the applicants are. Nevertheless, eight of the bodies surveyed required information about the applicant to be provided, and of these, four had this included as a mandatory field in the request forms. These were DG Employment, DG Justice, DG Research, DG Taxation. Supplying this information was optional for DG Enterprise, DG Health, DG Environment and the Secretariat General. The options are shown on the chart below:

DG	Mandatory/ Optional	Options for Information to be provided
<b>Employment and Social Affairs</b>	<b>Mandatory</b>	Individual Industry/Business National/Regional Authority Non Profit Organisation Doc Centre/Info Point Education/Research EU Institutions Press/Media International Organisation Other
<b>Enterprise and Industry</b>	Optional	unknown public authority citizen lobby, federation, association industry and services journalist Lawyer MEP University, School International Organisation

<b>Environment</b>	Optional	DG ENV Commission Other EU Institutions Governmental NGO/Association Industry/Services/Lobby University/School Individual International Organisation Relays Journalist Other
<b>Secretariat General</b>	Optional	Academic Citizen Journalist Lawyer Other Institution Public Authority Unknown
<b>Health</b>	Optional	citizen consultancy, lobbying consumer organisation government, public body industry, business international organisation non profit organisation other press, media scientific, research student university, school
<b>Justice</b>	<b>Mandatory</b>	citizen consultancy, lobbying EU Institution government, public body business non profit organisation press, media student research institute/university
<b>Research</b>	<b>Mandatory</b>	Individual International Organisation National Contact Point (NCP) Natural Person (individual) Research Organisation Secondary or Higher Education Establishment Small or Medium Enterprise (SME)
<b>Taxation</b>	<b>Mandatory</b>	Public Administration Media Business Student Other

Access Info sees no reason why applicants should be required to state their profile or affiliation. Even for those forms where the responding is optional, the existence of this field will give the impression that it is necessary to supply the information and put inexperienced requestors under pressure to provide an answer. Access Info understands that this information may be used for statistical purposes only and we have no evidence that it results in any discriminatory treatment. Nevertheless, the way in which the information is asked for at present is inappropriate and is inconsistent with the right to ask for documents without giving reasons, as supplying an identity is tantamount to having to explain why the information is needed.

➤ ***The SG should review the use of a field which requires applicants for access to documents to declare their affiliation. If such fields are to be used, they should always be optional and should include a category such as "do not wish to declare" to make plainly clear to requestors that they are under no obligation to supply the information.***

## 2.5 The Missing Format Options

Applicants for access to documents have a right to specify the preferred format of access for the documents. Article 10.1 of Regulation 1049/2001 makes clear that:

*The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, including, where available, an electronic copy, according to the applicant's preference.*

It is, however, very difficult to exercise this right because not one of the forms, including not the Secretariat General's form, provided applicants with a field by which they could express this choice.

Access Info included the statement of the preference of format in our request, and this was respected in most cases (although DG Health sent us documents by regular mail for reasons which are not entirely clear to us). It is not reasonable to expect inexperienced requestors to know that they can state the preference in this way, and it should be included in the request forms.

➤ ***This failure to anticipate in the request form the format for receiving the information is a serious omission and should be rectified immediately, giving applicants a clear option to expressed their preferred receipt format.***

### 3. ANSWERS FROM BRUSSELS

#### 3.1 Acknowledgements

Just half of the DGs plus the SG issued acknowledgement notes. These were received between 15 September, the day the requests were filed, and 25 September. The fastest responses came from DG Employment, DG Health and Consumers, and the Secretariat General (same day replies) and from DG Competition, DG Internal Market and DG Research (acknowledgement received the following day).

Two DGs did not acknowledge the request but provided almost immediate answers: DG Regional Policy and DG Maritime Affairs.

Access Info notes that most of the acknowledgements were personalised rather than being automatically generated responses, with the exception of the Secretariat General and DG Research. On the one hand, this personal attention is positive, on the other hand, if it takes time even to issue an acknowledgement (up to 10 working days) then this is not a very satisfactory system from the perspective of a member of the public who submits a request and then hears nothing.

Reference numbers were issued for 6 of the 9 acknowledgements; three DGs (DG Health, DG Internal Market, and DG Taxation) issued acknowledgements sent by e-mail within a week but no reference numbers. The reference numbers provided by DG Employment and DG Research are not the GESTDEM reference numbers which should be issued to access to documents request. So in total only the SG, DG Environment, and DG Competition issued timely acknowledgments with the correct reference numbers.

Acknowledged	Immediate Response	No Acknowledgement
DG Agriculture*	DG Regional +	DG Economic and Financial Affairs
DG Competition	DG Maritime Affairs +	DG Education and Culture
DG Employment +		DG Energy and Transport
DG Environment		DG Enterprise and Industry
Secretariat General		DG Information Society
DG Health and Consumers**		DG Justice, Freedom and Security
DG Internal Market**		
DG Research +		
DG Taxation and Customs Union**		

\* Acknowledged after 14 working days

\*\* No reference number given

+ Reference number not a GESTDEM Number

With respect to the **reference numbers**, we note that at the end of the requesting process, we had still not received GESTDEM reference numbers from six (6) DGs: DG Maritime, and DG Regional (the fast responders), along with DG Justice, DG Research, DG Economic and Financial Affairs, and DG Education and Culture. This means that these six DGs might not have any reference of our requests being an access to documents requests and it would not be counted in any statistics on the number of requests received or the response times.

The failure to issue GESTDEM reference numbers to half of the requests filed (only 9 out of 17 had GESTDEM numbers) indicates serious problems with the receipt and processing of

access to documents requests. This is particularly remarkable in the case of Access Info's question for Brussels: we stated clearly inside the request that it was an access to documents request under Regulation 1049/2001.

A couple of other problems with the acknowledgments:

- DG Environment wrote to us on 21 September stating "Thank you for your e-mail dated 21.09.2009 registered on 21.09.2009 I hereby acknowledge receipt of your request for access to documents." We had sent our submission via the web form on 15 September 2009. It should not take 5 working days to send a simple acknowledgement and, even if it does, the start date for the time period should be the date the e-mail was sent or at least the following day.
- DG Taxation acknowledged our request submitted to them on 15 September via the website on 22 September but did not tell us the date of registration nor give a registration number. It was therefore impossible for us to know when the 15 day time period had started. When they did reply it was with an Ares number but not a GESTDEM number.

The SG's Staff Guide says that acknowledgements should be sent by the body receiving the requests "as soon as it has registered the application, unless the reply is sent by return of post". Very few of the DGs we contacted met this standard.

➤ ***It is recommended that all DGs improve their practice for issuing acknowledgements and make efforts to ensure that these are sent out almost immediately upon receipt of requests and correspond more closely to the date the request was submitted, especially for requests submitted electronically.***

➤ ***Request being filed by the on line contact forms should be treated as such and should be issued GESTDEM numbers.***

### 3.2 Timeframes for Responses

According to the Regulation, the timeframe to respond to a request is a maximum of 15 working days. In exceptional circumstances, the Regulation allows the initial time limit of 15 working days to be extended by other 15 working days. In this event, the applicant should be notified by the relevant DG or Service via a holding letter explaining the reasons for the delay.

The research team filed all the requests between 15<sup>th</sup> and 16<sup>th</sup> September 2009 (the request to the Secretariat General was filed on 25<sup>th</sup> September 2009). Allowing for the clock to start on the day following our requests, we put Tuesday 6 October (or Wednesday 7 October) as the cut off date. All DGs replied within this timeframe, except DG Justice which answered on 9 October and DG Economic and Financial Affairs which answered on 19 October. (DG Health sent the answer by post rather than e-mail, so although dated 7 October it arrived at the Access Info office a few days later). The late reply from DG Economic and Financial Affairs is of concern because no acknowledgement was issued.

DG Agriculture which had asked for an extension after 14 working days, citing rather vague "administrative reasons", and then provided its answer within the additional 15 days allowed. This is slightly strange as we learned after the completion of our request exercise that similar requests had been filed by another NGO in April and DG Agriculture had replied, although a different official had handled the request. This delay in responding seems to indicate administrative inefficiency: given that the documents requested are

about the right of access to documents, they should have been immediately available to the person answering the request.

➤ ***DGs should ensure that some response is issued to the requestor within the 15 days. It is preferable to receive an acknowledgement with notification of an extension than silence.***

➤ ***The application of exceptions should not be used in only exceptional cases. Where an extension is applied, it should be properly justified.***

➤ ***DG Agriculture should review its reasons for applying extensions and should review its internal information systems with a view to improving information about when documents have previously been released.***

### 3.3 Format of the Response: Email vs. Regular Mail

The majority of the correspondence we received was by e-mail. The one exception was DG Health which sent an answer by post rather than by e-mail, even though our expressed preference for the information was to have it in electronic format. It is not clear why this was done, apart from the fact that partial access to the document had been granted and it appeared that the sensitive information (names of certain public officials) had been blacked out with a marker pen. Nevertheless, this redacted version could have been scanned and sent electronically.

➤ ***It is recommended that when an applicant requests electronic copies, these be provided, even if the electronic copy is simply a scanned document. As recommended in Section 2, the request forms should provide the option to specify the response format.***

### 3.4 The Answers

The responses to the request to know whether the DGs had internal guidance for staff on how to answer access to information requests fell into four categories

- No, no internal guidance exists (4 DGs)
- Yes, documents exist and these were provided (8 DGs plus SG)
- Yes, documents exist and partial access was provided (1 DG)
- Yes, documents exist, but refusal to provide them (1 DG)
- Refusal to process the request (3 DGs)

The following chart shows which DG gave us which response; more details can be found in Annex A of this report.

RESPONSE	DG	QUALIFICATION OF RESPONSE
No internal guidance	Enterprise and Industry Energy and Transport Economic and Financial Affairs Regional Policy	COMPLETE ANSWER
Yes and documents provided	Agriculture and Rural Development Environment Information Society and Media Internal Market and Services Maritime Affairs and Fisheries Taxation and Customs Union Employment (guide provided in French) + Secretariat General	COMPLETE ANSWER
Yes and partial access given	Health and Consumers	PARTIAL ACCESS
Yes but refused to provide documents	Competition	REFUSAL
Refused to process the request	Education and Culture Justice Freedom and Security Research	REFUSED TO PROCESS

Qualifying the response that no internal documents exist or complete provision of documents as “complete answers” we see that we have a 76% response rate of complete answers.

We took the answers at face value, accepting that if the DG said no documents exist, this is true. The one exception to this is the case of **DG Employment** which in fact **sent two contradictory responses**: the first response did not answer our question but provided a link to the SGs Citizen’s guide. Access Info replied (20 September) with a clarification, asking for any internal documents in DG Employment and on 23 September received a response from the InfoCentre saying that “*DG EMPL has not drafted internal guidelines on the handling of public access requests but follows the relevant legislation, as well as the guidelines of issued by the European Commission’s Secretariat General.*”

To our surprise, on 20 October we received another response from the Head of the Coordination Unit of DG EMPL providing us with a 7-page internal manual in French entitled “*Manuel de traitement des demandes d’accès aux documents*” (“Manual on processing access to document requests”). We replied immediately asking for a copy of this document in English; on 22 October we received the same message and the same document followed by a two attempts to recall the e-mail; no further messages were received.

In the Section 4 we analyse more in depth the internal documents received. In the remainder of Section 3 we evaluate the refusals to provide information or to process our requests.

### 3.5 Partial Access

In one case we were formally granted partial access to the internal guidelines: **DG Health and Consumers** blacked out from its internal guidance the names of the individuals working on access to documents on the grounds of Article 4.1.(b) of Regulation 1049/2001 stating that to provide them “would undermine the protection of privacy and integrity of the individuals” and that “Moreover, some persons have moved to other posts or assignments and the names of persons in charge to not bring any further value to the rules and procedures in place in the Directorate General”.

**DG Taxation** also removed the name of the person responsible for access to documents and replaced it by three dots, even though the letter does not state that an exception has been applied, which it should have done.

Access Info notes that the other six DGs which had internal guidance provided the names of the responsible officials. Furthermore, in the updated copy of the SG’s guidelines, released to us by DG Environment, a full chart is provided with the names of all responsible officials, so this information is already in the public domain.

➤ **Members of the public should have access to the names of officials responsible for dealing with access to documents requests. There is a public interest in knowing who is taking decisions on this fundamental right. In addition, because many of the letters and e-mails sent to requestors during the process of handling an access to documents request contain the names of the relevant officials, this information is already in the public domain and there is no reason for concealing it.**

➤ **It is recommended that whenever information is partially excluded from access, this must be explicitly stated in the covering letter provided to the public.**

➤ **DG Health and DG Taxation should make available the latest versions of their internal guidance with no information exempted.**

### 3.6 Refusal to Provide Access to Internal Guides

DG Competition refused access to its internal guidance. The letter states that DG Competition handles requests for access to documents in conformity with Regulation 1049/2001, with the decisions of the Court of First Instance and the European Court of Justice, and taking into account the SG’s guidance. But then states that:

*This internal guidance is a working document that has been prepared for purely internal purposes and has not been validated by the Commission nor by other services within the Commission. The document cannot be disclosed to the public since it would undermine DG Competition’s decision making process within the meaning of Article 4(3) of Regulation 1049/2001.*

It is hard to understand how a serious harm to the decision-making process could arise from disclosure of this information. Unless that is, the internal guidance is not in line with the Regulation 1049/2001 and the case law.

The letter from DG Competition also tried to put the burden for demonstrating the public interest in the document on the requestor by asserting that we should have demonstrated this in our request. Access Info finds it completely unacceptable that requestors should be

required to anticipate possible exceptions in the initial request for documents and argue against these. In this case it is also unreasonable given that many other DGs released their internal guidance without hesitation, which means that we could not have anticipated this rejection for DG Competition. If this is the kind of practice which is recommended in the internal guidance, then it is important that the public know about it.

Access Info notes that the fact that an internal document has not been “validated” by the Commission or another of its services is not a legitimate ground for refusal under Regulation 1049/2001 and should not have been used in the arguments as to why this document is not being released. Again, if this is a practice which is recommended in the internal guidance, then the guidance is written in a way which undermines the right of access to documents and the public should know about it.

A further minor but nonetheless important quibble is that the letter gave a postal address for further correspondence but not an e-mail address, although communication by e-mail and fax are also permitted and these contact details should have been given as well.

In response to this refusal, Access Info chose to do what a typical information-seeker might do and resubmitted the request including an argument about the public interest. This letter is being treated as a confirmatory application and on 11 November we received a letter from the Secretariat General saying that further consultations were needed and that the deadline for providing us with an answer will be 4 December.

➤ **DG Competition should release its internal guidance on access to documents so that it is no longer the only DG to keep this information secret.**

### 3.7 Refusal to Process the Request

Three DGs – Education and Culture, Research, and Justice, refused to process our request for information on the grounds that they were not responsible for access to documents requests.

This is in clear contradiction to the rules (see Section 1) and to the guidance from Secretariat General received as part of this monitoring exercise which clearly states that “*The administration of initial applications for access is decentralised. The DGs and Services handle applications relating to documents within their sphere of responsibility. In the interest of greater efficiency, **each Service and DG has designated a document access coordinator** (see list in Annex). **All applications for access must go through these coordinators, who monitor progress in providing replies.***” [original emphasis].

Access Info’s experience showed that not all DGs are aware of this decentralised system:

**DG Education and Culture**, which does not have a request form on the website but rather gives an e-mail address from the “Contact” button answered our e-mail on 29 September as follows: “*Dear Madam, we are not competent on this topic.*” The curt e-mail referred us to the transparency page of the SG.

**DG Research** replied on 8 October to the request submitted on the web form on 16 September stating that “*The Research Enquiry Service to which you have sent your request is a mailbox forseen [sic] for questions relating to legal and financial issues concerning the FP7 research Framework Programme. It cannot therefore follow up on your request.*” A link to the to the SG’s application form was provided.

**DG Justice, Freedom and Security** replied on 9 October stating that: "the subject of your query - internal documents on how to answer requests for information under Regulation (EC) No 1049/2001 - is under the competence of the Secretariat General, therefore we would suggest you address your correspondence to them." A link was provided but it was to the general Mailbox of the Secretariat General rather than the access to documents request form. A reference was also given to the Register of Documents was made although the web link given did not work.

The response from DG Research did not completely surprise us as it was clear that the on line form did not have members of the public making general enquiries in mind but was designed rather for those applying for or working on research projects. The DG Justice response did surprise us as their [website](#) clearly states: "In case you do not find what you are looking for, an [on-line form for requests of information/documentation](#) is at your disposal" and the title of the request form is "Request for Information/documentation". This form gives the impression to the member of the public that they can request documents directly from DG Justice.

Access Info submitted confirmatory applications with DGs Research and Justice (we knew from Corporate Europe Observatory that DG Culture and Education does not have internal guidelines). **DG Research** responded that they had not received the initial request and therefore refusing to treat the confirmatory application as anything but an initial request. They also took the opportunity to inform us that they have no internal documents on the access to documents rules. The letter concluded: "*May I ask you in the future to introduce your requests for access to documents via the appropriate application form following the link mentioned above.*"

**DG Justice** replied by post (letter posted on 30 October 2009) with a charming letter designed to explain that their first response had been a mistake and not been meant to deny their competence to process our request. The latter reads:

*I am afraid that, due to a number of unfortunate circumstances, you have read the reply as a denial of your right of access to the documents requested. Indeed, since DG JLS has no specific rules to apply the Regulation 1049.2001, the purpose of our letter was to redirect you to the guide provided by the Secretariat General of the Commission which may be consulted on line via its web site. Our intent was not in fact to decline, as you suggest, our competence to answer your request, but to indicate the direct link to this web site. ... unfortunately the link indicated in our answer to this web site was erroneous and this contributed to increase the misunderstanding. I therefore sincerely apologise for all the inconvenience and invite you to visit the following direct link to the pertinent page.*

[http://ec.europa.eu/transparency/access\\_documents/index\\_en.htm#](http://ec.europa.eu/transparency/access_documents/index_en.htm#)

The letter also tries to annul the fact that our letter was a confirmatory application:

*Indeed we consider the present letter as an explanation of a positive answer given to you in the first instance: since the requested document does not exist we addressed you to the one used in practice.*

Remarkably, however, the letter does not fully address one of the most important points, which is that each DG should receive and process requests. It simply states that:

*We also intended to explain that, while DG JLS, as all services within the Commission, is bound by Regulation 1049/2001, the general policy on public*

*access to Commission documents, including guidelines to apply the Regulation, falls within the remit of the Secretariat General of the Commission.*

This does not clarify however whether requests can be filed directly with DG Justice and, if so, how this can be done.

It is interesting to note that none of the three DGs which refused to process our request for information have internal guidelines relating to Regulation 1049/2001. It seems that these DGs have not themselves studied the rules nor the Secretariat General's guidelines.

- ***DG Culture, DG Research and DG Justice should review the rules relating to access to EU documents and should adjust their internal procedures to ensure that members of the public can file requests for information with each of these bodies.***
- ***The websites should be updated where necessary to make clear how members of the public can file request directly with each of these DGs.***
- ***Staff should be provided with appropriate training so that they do not refuse to process access to information requests submitted to their DG.***

## 4. INTERNAL GUIDANCE: HOW TO ANSWER AND HOW NOT TO ANSWER

This section examines the documents received from the eight DGs from which, in addition to the Secretariat General, we received copies of internal documents from eight DGs.

The main finding was that after the shock of reading the DG Trade Vademecum, none of the documents released held anything particularly controversial. They were in the main part professionally written documents designed with the obvious intention of helping officials handle access to documents requests. Many drew inspiration from the SG Staff Guide, summarising parts of it and supplementing it with notes about the internal processes in that particular DG.

In some cases more elaborate guidance had been produced on issues specifically relevant to the particular DG. A good example is the internal guidance from DG Internal Market, which provided officials with up to date summaries of recent case law of the European Court of Justice, noting in neutral terms how this affected the documents which should or should not be released by that DG.

Relatively few of the documents provided had clear dates on them, making it hard to know when they were last updated. The document from DG Health was out of date, as noted by the Directorate staff who blacked out the names of the staff mentioned, saying some had moved on to other positions. The Secretariat General's Staff Guide as provided to us by the SG in a non-machine readable scanned PDF came with the following caveat:

*"We must however inform you that this guide is quite to be updated"*

Our researchers estimate from references in the guide that it was produced sometime between mid 2001 and mid 2002. DG environment provided us with an updated version of the same document in a machine-readable PDF and with additional annexes, and with one web link updated, but not many other changes.

One of the reasons the SG's guidance needs urgently to be updated, is that there have been some important court decisions which affect access to documents and the experience of the implementation of Regulation 1049/2001 should be captured in that guide. Access Info hopes that this report will contribute to that process of refining the internal guidance within the European Union and improving the procedures from the perspective of the citizen.

### 4.1 The Internal Guides

The internal guides that we received were extremely varied in length and detail. Given that they all supplement the SG's Staff Guide, this seems to be reasonable. The important thing is that they clarify procedures within each respective DG.

Based on the experience of this study, Access Info notes with disappointment that none of them really take into account the perspective of the citizen approaching the body to ask for information, and the starting point for the guides is once the request has been received.

#### **Agriculture and Rural Development**

DG Agriculture, after a delay of almost 6 weeks, provided us with a three-page internal memo dated 11 February 2008 which sets out information on the procedures for handling access to documents requests. The note provides background on Regulation 1049/2001, links to the relevant guidance, and it summarises the exceptions and notes the need to

consult Member States. Timeframes are highlighted. Information is provided about the internal unit which provides advice.

### **Employment, Social Affairs and Equal Opportunities**

DG Employment sent us a six-page internal guide which takes the public official through the process of handling an access to information request step-by-step, with a check list at the end. The document provides a link to the SG's internal guidelines, states internal procedures, emphasises the deadlines and summarises the exceptions, stressing where they need to be applied on a case-by-case basis and mentioning some specific issues related to infringement procedures and public procurement. It also explains the relationship between the DG and the SG on access to documents and gives contact details of the relevant SG officials.

### **Environment**

DG Environment emailed us a series of documents included the April 2009 version of their "Formal Handling of Initial Requests for Access to Documents". The advice provided to staff by DG trade includes advice on both responding to information requests in relation to the 1049/2001 access to documents rules and the 1367/2006 Access to Environmental Information rules. Guidance is comprised of a selection of internal web advice pages and documents which include diagrams and flow charts that aim to help public officials take both regulations into account when deciding whether to release information or not.

DG Environment provided us not only with their internal guidance but also with a full set of other relevant documents. These included the Secretariat General's guidelines in a machine readable PDF document, a list of contacts of those responsible for the access to document rules for each of the different DGs and information on the composition of the Working Party on Information.

### **Information Society and Media**

Access Info received seven pages of documents including a "Note for the Attention of DG INFSO Heads of Unit" about how to handle requests for documents, focusing on the internal procedures and how to treat the requests step by step. There is an emphasis on document management and we were also provided with a page on why good document management is important. Deadlines are made clear. There is a reference to both the SGs internal and external guidelines and exhorts public officials to "makes sure that Regulation 1049/2001 and the "Detailed Rules" are fully adhered to."

### **Internal Market and Services**

Access Info received 27 pages of documents, the majority in English:

- "Procedures for handling applications for access to documents" dated 8 July 2008
- Information Note dated 8 July 2008 on updating of internal procedures for access to documents
- Procedures for registering applications for access to documents dated 19 March 2009
- Note on relationship access to documents and data protection, which specifies the underlying principles and the interactions involved in the processing of applications to personal data and access to documents. The note states the contact persons in the DG for data protection and the co-ordinator for access to documents.
- Note in French on "How to ask a member state for their agreement on releasing its documents?"

- Note on "Dealing with requests for documents formulated by a national jurisdiction".
- Note on "Access to documents and implications of a MS's power of veto"
- Note (in French) "Frequently asked questions/answers raised by the infringement procedure for access to documents in DG MARKT".

These documents set out very clearly the internal procedures inside DG Internal Market. They seem to be up to date and reflect the recent case law of the European Court of Justice where relevant. These guidance notes are therefore more up to date than the guidance from the Secretariat General.

### Health and Consumers

One page extracted from the intranet and a 2.5 page memo provided. The intranet page gives a summary of internal procedures and considerations on a step-by-step basis and also links to more detailed SG guidance. The memo from July 2007 provides an update on the internal procedures for handling requests. Contact names of individuals have been blacked out from the document: as noted above, one concern here is that the document is out of date and needs to be updated.

### Maritime Affairs and Fisheries

DG Maritime Affairs sent a one-page explanatory note, from their internal website, which provides staff with basic step-by-step guidance on access to documents, stating which units handle the requests, who takes decisions, and noting the time frames for answering. The cover letter provides a link to the SG's website and notes that *"As to the registration of documents, please note that all incoming and outgoing mail is registered and replies are provided in accordance with the 'Code of Good Administrative Behaviour'."*

### Taxation and Customs Union

The letter from Taxation and Customs Union included an extract from the internal website which provides staff with basic information about the existence of a right of access to documents, a link to the SG's guide, and information about the unit responsible for handling access to documents requests. It emphasises two important rules, the 15 working day timeframe and the possibility of appealing the application of exceptions, which are listed. It notes that Member States have a right to veto access to their own documents. The name of the person responsible for access to documents in DG Taxation has been removed and replaced by three dots even though the letter does not state that an exception has been applied, which strictly speaking it should have done.

➤ ***The SGs guide and a number of the internal guides reviewed seem to need some updating. It may therefore be opportune for the SG to conduct a process by which the internal guides are thoroughly reviewed with at least three objectives in mind:***

- ***to ensure that public officials are fully informed of the rules and procedures on access to documents and that they know about any recent jurisprudence interpreting the access rules;***
- ***to ensure that the internal procedures are as streamlined and efficient as possible, learning from the experiences across all DGs to improve response times for acknowledgements and replies.***
- ***to integrate the citizen perspective into the internal vision of the systems for receiving and processing access to documents requests.***

## Annex A: ANSWERS RECEIVED

DG	Acknowledgement	Date Reply Received and Nature of Reply	Have internal guidance?	QUALIFICATION OF RESPONSE
<b>Agriculture and Rural Development</b>	No; extension requested on 6th October. Ref.: GESTDEM 2009/3893	reply received on 29th October	Yes and documents provided	COMPLETE ANSWER
<b>Competition</b>	NONE	reply received on 29th September, ref. number GESTDEM 2009/3660	Yes but refused to provide the guidance	REFUSAL
<b>Economic and Financial Affairs</b>	NONE	reply received on 19th October, ref. number 0520/2009	No, do not have any internal guides	COMPLETE ANSWER
<b>Education and Culture</b>	NONE	EAC-Info replied on 29th September, stating they are "not competent on this topic". They referred us the SG directorate for regulation on access to EU documents. Website link: <a href="http://ec.europa.eu/transparency/index_en.htm">http://ec.europa.eu/transparency/index_en.htm</a>	Refused to respond to question	REFUSED TO PROCESS
<b>Employment, Social Affairs and Equal Opportunities</b>	Yes, on 15th September. Ref.: 3511	Reply received on 18 September referring to the Citizen's Guide; answered on 20 September asking for their internal guidance; answer of 23 September stated that they have not drafted any internal guidelines, but follow the relevant legislation and the guidelines from the European Commission's Secretariat General	Yes, have internal guidance which is in FR	COMPLETE ANSWER
<b>Energy and Transport</b>	NONE	reply received on 18th September, ref. number GESTDEM 2009/3369	No internal guidance	COMPLETE ANSWER
<b>Enterprise and Industry</b>	NONE	reply received on 29th September. Ref. GESTDEM 2009/3652	No internal guidance	COMPLETE ANSWER
<b>Environment</b>	Yes, on 21st September. Ref.: Gestdem 2009/3726	reply received on 24th September.	Yes, documents provided	COMPLETE ANSWER
<b>European Commission - Secretariat General</b>	Yes, on 25th September. Ref.: Gestdem 2009/3814	reply received on 12th October	Yes, documents provided	COMPLETE ANSWER
<b>Health and Consumers</b>	Yes, on 15th September. No reference number	reply received by letter on 16th October 2009 (letter dated 7 October, but we were travelling then)	Yes, documents provided	PARTIAL ANSWER
<b>Information Society and Media</b>	NONE	reply received on 28th September. Ref. number GESTDEM 2009/3824	Yes, documents provided	COMPLETE ANSWER

<b>Internal Market and Services</b>	Yes, on 16th September. No reference number	reply received on 18th September, ref. number GESTDEM 2009/3687	Yes, documents provided	COMPLETE ANSWER
<b>Justice Freedom and Security</b>	NONE	reply received on 9th October	Refused to respond to question	REFUSED TO PROCESS
<b>Maritime Affairs and Fisheries</b>	No acknowledgement, but fast response	reply received on 16th September. REG/F2(2009)D/10387	Yes, documents provided	COMPLETE ANSWER
<b>Regional Policy</b>	No acknowledgement, but fast response	reply received on 17th September.	Yes, documents provided	COMPLETE ANSWER
<b>Research</b>	Yes, on 16th September. Ref.: Case_ID: 0195027 / 0000000	reply received on 8th October.	Refused to respond to question	REFUSED TO PROCESS
<b>Taxation and Customs Union</b>	Yes, on 22nd September. No reference no.	Reply received on 29th September, ref. number GESTDEM 2009/3760	Yes, documents provided	COMPLETE ANSWER

## Annex B: MANDATORY FIELDS IN ON-LINE FORMS

Directorate General	Title of the request form	Title	Gender	first name	last name (name)	e-mail	Personal/professional Affiliation	country of residence	address	subject of the question	question/comment	Phone/Fax	Language requested	preferred language to receive reply
<b>Agriculture</b>	Information Request Form	MF	X	✓	MF	MF	X	✓	✓	MF	MF	X	X	✓
<b>Economic and Financial Affairs</b>	Mailbox Service	X	X	X	MF	MF	✓	MF	✓	MF	✓	X	X	X
<b>Employment</b>	Contact Form	✓	X	MF	MF	MF	MF	MF	X	MF	MF	X	X	✓
<b>Energy and Transport</b>	Contact	MF	X	MF	MF	MF	✓	MF	✓	X	MF	X	X	X
<b>Enterprise and Industry</b>	Information and documentation request form	✓	X	✓	MF	MF	MF	MF	MF	✓	MF	X	X	MF
<b>Environment</b>	Information/Documentation Request Form	✓	X	✓	MF	MF	MF	MF	MF	✓	MF	X	X	X
<b>Health and Consumers</b>	Requests of information/documentation	✓	X	✓	✓	MF	✓	✓	✓	✓	✓	X	X	X
<b>Internal Market and Services</b>	Information Mailbox	X	X	X	MF	✓	✓	MF	✓	MF	MF	X	X	✓
<b>Justice, Freedom and Security</b>	Requests for information/documentation	MF	X	MF	MF	MF	MF	X	✓	MF	MF	X	X	X
<b>Maritime Affairs and Fisheries</b>	Contact	X	X	✓	✓	✓	X	X	✓	X	✓	X	X	X
<b>Research</b>	Research Enquiry Service	X	MF	MF	MF	MF	MF	MF	X	MF	MF	X	X	X
<b>Taxation and Customs Union</b>	Contact Form	✓	X	✓	✓	MF	✓	✓	X	MF	MF	X	X	X
<b>Secretariat General</b>	Access to a documents	X		MF	MF	MF	✓	MF	✓	MF	X	✓	✓	MF
<b>Secretariat General</b>	Mailbox form	✓	X	MF	✓	MF	X	✓	X	✓	✓	X	X	✓

A photograph of a person in silhouette flying a kite on a beach. The kite is red and white and is flying in a blue sky with scattered white clouds. In the background, there is a rocky dune with a wooden fence and other people walking on the sand.

Access Info Europe is an international human rights organisation, based in Madrid, which works to promote a strong and functioning right of access to information in Europe and globally. Access Info's goal is for the right of access to information to serve as a tool for defending civil liberties and human rights, for facilitating public participation in decision-making, and for holding governments accountable.