DG TRADE

VADEMECUM ON ACCESS TO DOCUMENTS

January 2009

This vademecum will be updated on a regular basis on the basis of the practical experience gained in handling requests for access to documents

Article 255 EC Treaty

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents (…).

CONTENT :

10 things to remember on Access to Documents

1. **All documents**, including e-mails, held by the Commission, even if we get them from third parties, are in principle subject to disclosure.

2. We must give reasons for any refusal based on the **exceptions** of the Regulation (i.e. public security, defence and military matters; harm to international relations; economic policy; protection of privacy and integrity of individuals; protection of commercial interests, court proceedings and legal advice; investigations; and harm to decision making - which includes negotiating processes).

3. No type of documents held by DG Trade can be automatically excluded from access: each document has to be examined **case-by-case**, on the basis of its actual **content** (and not of its status), as to whether any exception applies. This includes negotiating directives, for example.

4. If only parts of a document are subject to an exception, the rest of the document must still be released ("**partial disclosure**").

5. It is **for the Commission to decide** whether a document is released or not. Third parties can be consulted in case of doubt – but the Commission has the last word.

6. **Deadlines** to reply are very tight, i.e. within 15 working days. Failure to reply is equivalent to refusing access.

7. **Remedies**: Refusals or partial disclosure can be appealed ("confirmatory application") to the Secretary General. If the refusal is upheld, the applicant can go to the Court of First Instance or complain to the Ombudsman.

8. When you request information from **third parties** (e.g. industry questionnaires), do not forget to mention that the information they provide is subject to the EU rules on Access to Documents.

9. Make sure your **filing** is reliable so that it is easy to find documents, even after people have left the unit

10. Be aware that your documents, and especially meeting reports and e-mails can potentially be disclosed. This must be **kept in mind when writing such documents**.

I. OVERALL PRINCIPLES

A legal obligation

- Article 255 EC Treaty
- Regulation No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (O.J. L 145, 31.5.2001, p. 43) (*in the process of review – currently first reading in EP)*
- Implementing decision adopted by the Commission on 5 December 2001 (O.J. L 345, 29.12.2001, p. 94).

Beneficiaries

- Any EU citizen or legal person residing or having its registered office in a Member State (Art. 1 of the Regulation).
- and also citizens of third countries not residing in an MS and legal persons not having their registered office in one of the MS (Art. 1 of the Implementing decision). The latter category does not have the possibility of appealing to the Ombudsman though.

What documents ?

- The right of access applies to **all documents held by the Commission** (Art. 2(3)), i.e. not only those produced by it but also those received from third parties, **whatever the medium**[1].
- This also includes **e-mails**, in so far as they may be considered relevant. For instance, official exchanges between the Commission and outside organisations, institutions or business are Commission documents within the meaning of the Regulation. The same applies to e-mails with substance that are essential for a given file. This includes e-mail which we receive only in copy (*for example, one recent case covered detailed exchanges between DG DEV and outside organisations, where we were in copy. DEV were consulted prior to release by us*). However, day-to-day e-mail traffic providing contacts at desk levels are considered by the Secretariat General as being "personal" to desk officers, and are therefore not considered documents within the meaning of the Regulation. Hence the need for a proper filing system for e-mails (see further).
- **No category of documents is excluded a priori** from the right of access, **including classified documents**[2]. Each application for access, and each requested

[1] The Regulation (Art. 3) defines a document as "any content produced or received by the Commission and its departments, concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility in connection with its official duties and whatever its medium - written on paper or stored in electronic form or as a sound, visual or audiovisual recording";

[2] Documents classified as «sensitive» (top secret, secret or confidential according to the rules of Commission Decision 2001/844) are not excluded from the scope of the Regulation. However, there are specific rules as to the handling of such requests : they must be handled by authorised persons, using protected procedures (Art. 9). Moreover, a decision by the Commission to declassify a document is required before transmission can take place – this is a relatively straightforward process. However, only the lowest level of classification (EU Restricted) is used in DG Trade, mainly in the case of negotiating guidelines (see further).

document, must be treated separately and examined thoroughly, **case by case**. This would, include for examples, responses to public consultations or questionnaires. This implies that we can not easily guarantee the confidentiality of information shared with us.

- **Access does not have to be given to documents that don't exist**. This may sound obvious, but we do not have to create documents to meet a given request (other than, for example, simple lists of meetings or documents) nor reply to requests for information rather than documents per se.

Exceptions (Article 4 of the Regulation)

- Access to document can be refused :

  - for reasons of protection of **public interest**, as regards public security, defence and military matters, **international relations** and the financial, monetary or **economic policy** of the Community or an MS (Art. **4(1)**(a));

  - for reason of protection of **privacy and integrity of individuals** (i.e. Community legislation on protection of personal data) (Art. **4(1)**(b));

  - for reasons of protection of **commercial interests**, court proceedings and legal advice, **investigations**; unless there is an overriding public interest in disclosure (Art. **4(2)**);

  - for reasons of "**decision making**", which includes negotiating processes, (Art. **4(3))**, i.e. for :

    1) documents drawn up by an institution for internal use or received by an institution, which relates to a matter *where the decision has not been taken* by the institution;

    2) documents containing opinions for internal use as part of deliberations and preliminary consultations within the Commission *even after the decision has been taken* if disclosure of the document would seriously undermine the institution's decision-making process;

    unless there is an overriding public interest in disclosure.

  The grounds indicated in bold are those most relevant to DG Trade.

- The **public interest test** in Arts. 4(2) and 4(3) implies that a refusal to disclose a document on the basis of the exceptions must be justified on a case-by-case basis according to the document's **content** and not its status. An unjustified refusal could give rise to a complaint on the grounds that the Commission is not meeting its commitments with regard to transparency (See Article 6 of the detailed rules for application annexed to the Commission's Rules of Procedure).

- **Time-limit** : the exceptions only apply for the period during which protection is justified, on the basis of the content of the document, with a maximum limit of 30 years. However, this limit does not apply in the case of documents covered by exceptions relating to privacy or commercial interests and in the case of sensitive documents where exceptions can continue to apply after this period (Art. 4(7)).

- If a document has already been transmitted to a large number of people in the course of our usual contacts or put onto the Commission's web site, it is clearly out of the

question to refuse access to it, even if the document may initially have been intended for internal use.

- Any **refusal** to grant access **must be based on one of the exceptions in the Regulation**. In case of refusal to grant access, the **applicant is informed** of the type of documents withheld and the **reasons for the refusal** must be properly stated (this is important for the Court in reviewing the legality of the decision). The reply must be accompanied by a list of all the documents which have been considered in the context of the applicant's request – including those which have not been disclosed. Even in case of complete refusal, the reply should indicate the document identified (and the reason why access is refused).

- If only part of the document requested is covered by one or more exceptions, the other parts of the documents must be disclosed ("**partial release**", Art. 4(6) – see below).

- **Refusals must effectively be based on the legal exceptions !** Bear in mind that refusals can not only be subject to a confirmatory request (handled by the SG) but that, at the end of the day, a party may seek the intervention of the **Ombudsman** and/or the **Court**, both of whom can verify whether the exceptions have been invoked in a justified manner, and possibly request the documents to be released. If it then appears that the Commission has abused the grounds for exception of Art. 4, this may have severe consequences for reputation of the DG and the institution.

Partial release of documents

- Under certain conditions, documents can be partially released :

  - When the released document also covers issues which were not mentioned in the applicant's request, the parts that are **not relevant** to the request will not be disclosed.

    For example : an applicant asked for a report related to negotiations with country X : if such report also refers to negotiations with country Y, those parts of the document relating to country Y can be deleted as not relevant to the request.

    Recent cases concern requests for information about meetings with "*individual companies*" on our FTAs which have allowed us to exclude *business federations* on the same points, or about meetings with "*DG Trade officials*" which have allowed us to exclude meetings on the same point with the Commissioner or the cabinet.

  - In case parts of the documents are covered by any of the exceptions, the remaining parts of the documents must nevertheless be released.

- The parts that are not relevant to the request or which are covered by Article 4 should be **deleted** if the document is electronically available, with an **indication** that non-relevant text has been deleted and an indication of the length of the length of the deleted text (e.g. "two lines deleted", "2 words deleted", "1 paragraph deleted"), or 'whitened' if the document is only available in paper format.

  => Practical experience shows that one of the more difficult elements is how to handle *personal comments or reflections in notes*, meeting reports or flash e-mails. In order to limit the deletions in released texts, it is recommended to separate the factual reporting of a meeting or phone call

from any personal assessment of the meeting or list of follow up points (see part III of this vademecum)

Third party documents

- Documents received from third parties "held" by the Commission are **also subject to the disclosure requirements**.

- There are no ***specific*** **exceptions** for third party documents other than those of Art. 4, *i.e.* the exceptions under Article 4 apply to Commission documents and to third party documents.

- It is **for the Commission to decide** whether a third party document can be disclosed or not without obligation to consult a third party, except when there is a doubt as to whether the exceptions of Article 4(1) and 4(2) apply, in which case the third party shall be consulted.

    - Only reasons given by third parties which correspond to one of the exceptions of Art. 4 of the Regulation can be taken into consideration. In any event, **the Commission will have the final judgement** on the release of third party documents.

    - In practice, it is very rare for DG Trade to consult a third party formally regarding release – although as a matter of good practice we inform correspondents of the Commissioner before their letters and the Commissioner's replies are made public.

- When a third party is consulted, it should be given at least 5 working days to reply.

    - If the Commission intends to disregard the third-party author's refusal to disclose a document (because the ground for refusal was not based on Art. 4, or because, in the Commission's view, none of these grounds apply), it must inform the author 10 days before releasing the document. The deadline for reply will then need to be extended.

    - The author can then bring an action before the Court of First Instance requesting the suspension of the Commission's decision and the deadline (see Article 5 of the detailed rules for application).

- The **DG Trade practice** is that :

    - when the third party is a **third country**, we will always ask its authorisation to disclose. If such authorisation is refused, it is considered that the exception of Article 4(1)(a) (international relations) applies.

    - when the third party is a **private entity** (an industry, a company or a person), it will only be consulted in case the Commission has a doubt as to whether the conditions for exceptions under the regulation apply. Avoid giving any impression that the third party has a veto right ! In any event the Commission has the last word. (As a courtesy measure you can, if you wish, always inform this third party of the full or partial release of its correspondence, but bear in mind that this causes delays to the answer and does imply some paperwork).

    - In case of correspondence between the **Commissioner** and a private entity the Cabinet will always, by way of courtesy, inform this third party of the full or partial release of its correspondence.

- Documents originating from **Member States** can be treated in the same way as the "third-party" category. Nonetheless, Article 4(5) of the Regulation provides that *"a Member State may request the institution not to disclose a document originating from that Member State without its prior agreement".* However, such non-disclosure must be justified by one or more of the exception grounds of Article 4. The Commission consults the Member State concerned in cases where it intends to disregard a prior request from the Member State not to disclose a document originating from it (Article 9).

- Documents originating from **other Institutions** are also treated like all third-party documents, but the other institutions are always consulted (Memorandum of Understanding).

Processing of applications and time limits

- Applications for access must be **handled "promptly"**. Incoming requests are registered by the SG or Trade 01. An acknowledgment of receipt must be sent to the applicant, either by the SG (in case of applications via the Europa website) or by Trade 01, if the request is directly addressed to DG Trade.

- If a request is addressed to a Unit other than Trade 01, Trade 01 must be promptly informed, so it can duly register the application and send an acknowledgment of receipt (For model replies see annex).

- **All replies** – even positive ones – **should be checked with Unit 01** before they are sent out to ensure coherence of our overall approach.

- **How to identify** an application for access to documents ? Most applications carry a reference to Regulation 1049/2001, but there is no obligation for a request to mention the Regulation. Any request that refers to documents should therefore be considered as an application within the meaning of Regulation 1049/2001. In case of doubt, Trade 01 should be consulted. Applicants are not obliged to state the reasons for their application.

- When an application is **insufficiently clear**, we can ask the applicant for a clarification or a narrowing down of the request, providing time parameters etc… (and if necessary, help the applicant therein), in which case the 15 days term only starts when the request is clarified (Art. 6(2)). The request for clarification should be discussed with Unit 01 and sent out via Unit 01.

- Within **15 working days** (i.e. 3 weeks) from registration of the application, the Commission must either

  1) provide access; or,

  2) in a written reply state the reasons for the total or partial refusal. This implies giving a **fair explanation of why the invoked exception(s) apply** and not just indicating the legal ground for refusal.

- In **exceptional** cases, e.g. in case of an application for a very large document or for a very large number of documents, this time limit can be **extended** by 15 extra days.

  - For complex requests, for instance those which involve numerous documents and/or various files and/or concern different units and/or consultation of another DG and/or of third parties, we usually try to leave the timeline open, after discussion with the applicant and giving the applicant an explanation why. In such cases, Art. 6.3. of the Regulation gives the Commission the possibility to confer

with the applicant informally, with a view to finding a fair solution. DG Trade has already had to resort to such solution several times.

- **Failure to reply** within the 15-day period is **equivalent to refusing access**, giving the applicant the right to make a "confirmatory application" to the Secretary-General.

- Documents are made available to the applicant either in the form of a **copy** (if necessary in electronic format), and, in exceptional cases (if there is a very large volume of material or if documents are difficult to handle), via consultation on the spot (the latter has not yet been the case for requests for access to DG Trade documents).

- In case the Commission is consulted by another institution (as provided by the Memorandum of Understanding) further to a request to that institution for access to a Commission document, the Commission has 5 days to react. This can be done informally (simple e-mail) and is coordinated by Trade 01.as provided in,

Remedies

- Refusal to provide access to all or part of a requested document gives the applicant the right to submit a **confirmatory application** to the Secretary General within 15 working days (3 weeks) of receiving DG Trade's reply.

- In case of refusal of a confirmatory request, or failure to reply by the SG, the applicant is entitled to bring an action in the **Court** of First Instance or to make a complaint to the **Ombudsman.**

For further info, see the SG's Access to Documents website :
http://www.cc.cec/home/dgserv/sg/docinter/index_en.htm

II. ACCESS TO DG TRADE DOCUMENTS

- The basic rule is that **every document** has to be assessed on a **case by case basis**, on the basis of its **content**. No single type of DG Trade document is automatically excluded from the right to access.

Negotiating directives

- Negotiating directives as such are not necessarily excluded.

- However, in practice in reviewing the **annexes** to the negotiating mandates we have, until now, always found that they fall under the exceptions of decision making process and international relations.

- The **Explanatory Memorandum** and the **recommendations** need to be looked at carefully on a case-by-case basis : parts of them may be factual and already of public knowledge and therefore should be made available, but other parts may be covered by the exception of decision making process[3].

Negotiating documents

- Negotiating positions and documents exchanged between the Commission and negotiating partners, as well as information notes to the College on the state of play of negotiations can under certain circumstances also be covered by the exceptions of Art. 4(1) (protection of international relations) and Art. 4(3) (documents for internal use relating to a matter where the decision has not yet been taken), but this has to be assessed on a case-by-case basis for each document.

- In case of documents originating from negotiating partners, the exception of "international relations" applies if that country does not agree with its disclosure (see above on documents from other States).

- The **time factor** is very important here. Depending on the state of advancement of negotiations, past positions may already be publicly known (i.e. no longer have any "news value"), in which case disclosure will no longer have an impact on decision-making anymore.

- On the other hand, the removal of the 30 years time-limit on the exception provided for in Art. 4.7 for sensitive documents may in certain exceptional circumstances also apply to negotiating documents, which can therefore be protected both before and after the conclusion of negotiations.

Reports and minutes of meetings

- **Reports or minutes of meetings are not excluded per se** : it has to be assessed on a case-by-case basis whether the exceptions apply to all or part(s) of the document. The full document must be considered, including comments, summaries, follow up points etc…

- **For the minutes of meetings** between the Commissioner and his opposite numbers: the exception in Article 4(3) (decision-making process), can be invoked only if the

[3] Where access is being given to parts of an EU restricted document, for COM documents, 01 asks the SG to declassify those parts of the document. For SEC documents, 01 declassifies relevant parts and informs the SG which in turn updates SG Vista and the register.

content has "**news value**" at the time of releasing the documents, *i.e.* contains positions, facts, viewpoints which are not yet known to the general public and therefore shed a new light on the decision taken or to be taken (but, cf. the public interest test and the time-limits).

Content of documents : business secrets and names of persons

- **"Business secrets"** that industry shares with us fall under the protection of commercial interests; in the case of reports or minutes of meetings with industry, only those parts of the minutes that fall under one or more exceptions will be protected. Obviously, we will not always be in a position to determine whether something is a "business secret", in which case it is better to take a cautious approach, or to cross check with the company concerned. Name of the company and its representative(s), date of the meeting and factual elements should normally be included, unless we can prove that releasing that information could affect their business interest.

- **Names of persons** (e.g. participants to a meeting, signatories to a letter etc…) are not deleted, unless we can show that revealing such name may harm that person's integrity (Art. **4(1)**(b) and Court Jurisprudence). For instance, there would be no reason to delete the names of persons whose daily business is to defend their company's or their industry's interests, nor the names of Commission staff copied in an e-mail. It is for the Commission to provide evidence that revealing a name would be harmful to the person in question.

Industry consultations and other consultations

- The right of access applies also to documents held by the Commission and received from third parties. Hence, **replies to industry consultations, or consultations of other stakeholders** (for instance in the context of Market Access, preparations of FTA negotiations, identification of offensive and defensive interests etc…) **also fall under the Regulation**.

- At the same time, those replies – though subject to individual review - can also be covered by the **exceptions**, and most notably **commercial interests** (Art. 4(2), first indent), which can potentially apply to sensitive information provided in that context, or in cases where the disclosure of the fact that a given company has participated in a consultation and/or given specific information could harm their interests or their competitive position in the EU or in a trading partner. However, the bottom line is that we **can not offer a 100% guarantee** of confidentiality to third parties participating in consultations.

  => You may wish to add a **disclaimer** to **any** consultation document or questionnaire where the results are not intended to be public, explaining that contributions received are subject to EU rules on public access to documents and the exceptions provided within those rules.

Briefings / Information notes to the Commission

- Briefings also need to be assessed on a case-by-case basis. However, we receive relatively few requests for briefing material and this may often fall under the decision making exception of Art. 4(3). The "**news value**" of the content is also a key element here in assessing whether the exception applies.

- We often receive requests for information notes to the College, which are usually drafted by the Cabinet. There is no per se exclusion of such notes, which often are carefully drafted in any event. A key factor will be whether the information contained in the note is still relevant to any decision the Commission still has to take or might

impact our relations with third parties if released. As a general rule, if information notes are more than a year old we may have relatively few concerns about their release.

Documents of the 133 and other Council working parties

- Not per se excluded. 3 categories need to be considered :

  - (i) documents **originating in the Commission** which are marked "public" or which are available on the internet can be considered public. For documents marked as "limited" or "EU restricted", disclosure of all or part of the documents must be assessed on a case-by-case basis.

  - (ii) documents originating in the **Member States** : treated as third-party documents with the specific rule in Article 4(5); The Member State is consulted and justification for non-release must be based on one of the grounds of Article 4.

  - (iii) **reports** of the 133 (or other Council or EP) Committees : in principle excluded under Article 4(3). Timing and news value are also important criteria here.

Dispute settlement procedures and legal opinions

- **Legal opinions** on potential cases brought (compatibility of third-country measures with WTO rules or bilateral rules) or defended in the WTO (compatibility of Community measures with WTO rules or bilateral rules), automatically falls under the exception of Art. 4(2) only if it originates from the **Legal Service.** Notes from opinions by the DG Trade Unit on Legal Aspects of Trade Policy can not be excluded on the basis of Art. 4(2).

- However, notes to prepare the **decision to seize the WTO**, or relating to **cases under way or concluded at the WTO** can fall under the exception of international relations (Art. 4(1)) and/or decision-making (Art. 4(3)).

- Submissions received from **other parties** to a dispute at the WTO are covered by the exception in Art. 4(1) (international relations) since they are governed by Article 18 of the WTO's DSB Regulation, which obliges us to maintain confidentiality.

Staff and budget issues

- Partly covered by the exception in Article 4(1) (protection of privacy), partly by the exceptions in Article 4(3) (documents for internal use relating to a matter where the decision has not yet been taken), and in very specific cases where retroactive transmission could seriously undermine the decision-making process.

- **Tender dossiers** are in principle covered by the exception in Article 4(2) (protection of commercial interests). Rules on tender files apply (DG BUDG).

Anti-dumping, anti-subsidy, safeguard and TBR proceedings

- The documents received in this context are mainly covered by the exception in Article 4(2) (protection of commercial interests of a natural or legal person court proceedings and legal advice, and of the purpose of investigations) and partly by the exception in Article 4(1) (protection of public interest as regards international relations).

- Information received from a third-party during an investigation is covered by the exception in Article 4(2) which includes all the information received pursuant to

regulations or decisions in the field of trade defence instruments throughout proceedings initiated in accordance with the basic Regulations in this field, and until the conclusion of any court proceedings and/or dispute settlements at the WTO which may result from these administrative procedures. This corresponds to the practice adopted since 1994. The exception in Article 4(3), first sub-paragraph, applies to internal or preparatory documents produced in the course of proceedings. The exception in Article 4(3), second sub-paragraph, may be applied to internal or preparatory documents produced in the course of proceedings which contain policy positions of a horizontal nature and are not case-specific. Information received from a third-party during an investigation is covered by the exception in Article 4(1) since it is governed by Article 6 of the WTO Anti-dumping Agreement, which obliges us to maintain confidentiality.

- Under Article 4(7), even after a proceeding is terminated, the exception can continue to apply to documents that might disclose business secrets, investigation practices or methods, or personal positions that could jeopardise the internal decision-making process, which are not to be disclosed.

- «Horizontal» documents (policy notes, procedural or investigation manuals) are closely linked to investigations and *can* be included in the general category of documents preparatory to a decision, but are not necessarily exempted from the Regulation : they have to be examined on a case-by-case basis. So far access to most policy notes and clarification papers has been rejected, and partial access has been granted to some. However, a case is now pending with the Ombudsman and the Court of First Instance.

- The same holds for all documents relating to the EU's defence against the actions of third countries. They can remain protected even after the initiation of court proceedings or dispute settlement and, if necessary, even longer after these procedures under one of the statutory exceptions in force (case-by-case decision).

- Where TDI cases are pending before the CFI/ECJ, the file related to that case is considered to fall fully under the exception in Article 4(2), second indent.

- **For the trade barriers regulation**: the same type of exclusions apply.

Non-public Commission documents put on third party websites

- Requests for non-public documents which have been leaked to the public, or have even been put on web-sites by third parties, must be handled as if the documents were not yet public

Studies

- Studies carried out for the Commission by an external consultant should be treated in the same way as any internal Commission document. The letter accompanying the positive reply to a request for access to a study must specify that the study was carried out by independent experts and that the Commission cannot be held responsible for its content.

III. PRACTICAL IMPLICATIONS FOR DG TRADE

Drafting of documents

- Each official must be aware that all his/her documents, including meeting reports and e-mails can potentially be disclosed. You should **keep this in mind when writing such documents**. This is particularly the case for meeting reports and e-mails with third parties (e.g. industry), which are favourite "targets" of requests for access to documents, especially by NGOs.

- Therefore, **all relevant documents must be drafted with utmost care, bearing in mind that they may be made public at some point**.

- A few tips :

  - when writing a **meeting report**, separate **factual elements** (*i.e.* a neutral account of what actually happened in the meeting and what was said by the participants), from **assessments and personal/subjective comments or opinions** (e.g. your personal evaluation of the meeting, your opinion on the real intentions of one or more participants, your assessment of the situation etc…) and **follow-up points**. This would allow us to have to release only the factual part of the report, and avoid partial release.

    => 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 …)

  - When writing a report, avoid recording statements which may turn out to be politically embarrassing for those who have made them and avoid adding such comments *to the report itself*.

  - Avoid making personal comments in **e-mails with third parties** which may be the object of disclosure. For instance, when writing an e-mail to an external contact which you happen to know personally or have contacts with outside the professional sphere, refrain from any message that may be of personal nature (e.g. 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).

Filing and registration of documents

- Given the very short time frames in which documents have to be found and the request has to be handled, it is of utmost importance that such documents can be easily identified and found. Some of our biggest headaches have related to meetings or correspondence before 2006, where responsibilities have shifted between units or where people have joined or left posts in the meantime. Hence the importance of proper filing and registration of documents, according to the rules and guidelines of the Commission and of DG Trade (see: http://www.trade.cec.eu.int/intra/how/docmanag/index.cfm). The principal tools are

likely to be Adonis/Ares, TSAR (where all records / reports of meetings should also be stored), Outlook (to establish possible meetings) and the unit's own filing system.

- **Registration** of key documents (incoming and outgoing letters, e-mails, notes) is done through the Adonis system.

- Important **e-mails** must also be registered : The general rule is that any e-mail containing important information, which is not short-lived and which is likely to require action, follow-up or a reply from the Commission or to involve the responsibility of the Commission or a DG, must be registered.

- But non-registered documents (in particular meeting reports and certain e-mails) may also have to be disclosed : in that case, a **proper filing system**, which allows to trace back all types of documents, including e-mails, even after the official which has drafted them has left the unit, is key. As is the case for registration, criteria for filing of **e-mails** are the same as for any other document.

- In particular, it is of utmost importance to ensure that files of colleagues which have left the unit remain accessible in the public folders.

- As far as **meeting reports** are concerned, putting reports of meetings in TSAR (at least in cases where meetings have been subject through a briefing request) greatly facilitates the task of tracing meeting reports.

  => We would advise each unit to set up a **functional mail** box to which all meeting reports are cc'd.

  The Trade Coordination team has created a new functional mail box where you can copy records of meetings/phone calls where the **Director General** participates ("**TRADE DOS MEETING REPORTS**"). The DG's team will then attach these records to the corresponding TSAR request for future reference, while for meetings with the DDGs this box will act as a repository which can be accessed for searching in the future.

- In case of problems in tracing documents which have been written or received by an official who has left the unit or the DG, the normal practice is to consult those colleagues who are still in the Commission, but not those who have retired or left.

It is up to each Unit to ensure that its current filing and archiving system is reliable so that it is easy to find documents in the very short time-limits laid down by the Regulation.

<u>Internal organisation for Access to Documents in DG Trade</u>

- Management of document access is coordinated by **Unit 01** (functional mail box TRADE ACCES DOCUMENT), which will pass on applications to the units concerned, collect the documents selected by them and advise, if necessary, on the proper application of the Regulation. Trade 01 ensures consistency of the DG Trade practices as regards access to documents, maintains contacts with the SG service in charge of access to documents and keeps track of case law on access to documents.

- **Replies are prepared by the units in charge of the relevant file** (on the basis of the available templates). Heads of Units must ensure that these replies comply with the provisions of the Regulation and that the necessary justifications are set out clearly in cases of refusal or partial refusal of access.

- **Replies** releasing documents in full or confirming that no documents exist may be sent out directly by the unit concerned, after having checked with Trade 01 prior to sending these out.

- **In the case of a decision to refuse an application** or positive replies which are part of a wider request, 01 is consulted;

- **Letters of reply** refusing access to all or parts of the requested documents, must be signed by the Director-General if this refusal is based on the exceptions of Article 4 (*i.e.* not if the partial refusal is based on the fact that parts of a document are not relevant to the specific request). The signataire should go via Trade 01.

- **If a longer deadline is needed** because of the amount of research required, 01 must be consulted.

- In case of **doubt**, always consult 01.

– In accordance with the Regulation, which provides for the protection of the Commission's copyright (Article 16), the draft reply shall contain the following wording: "Documents that are transmitted may not be reproduced or disseminated for commercial purposes without the Commission's prior authorisation."

– The **Secretariat General** is in charge of replying to confirmatory applications. In this case, 01 is consulted and provides elements (including additional factual justifications for non-disclosure and where necessary copies of all the documents considered for release or partial release) for reply to the SG on the basis of the elements provided by the relevant unit, which is always consulted before replying to the SG.

– Unit 01 will be assisted by a network of "Access to Documents" contact point in the relevant units.

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Annex : templates for replies