Reply of the European Commission to the European Ombudsman's suggestions for improvement concerning its own initiative inquiry OI/4/2023/MIK, related to how the European Parliament, the Council of the European Union and the European Commission handle requests for public access to legislative documents

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

On 2 October 2023, the European Ombudsman opened an own-initiative inquiry (OI/4/2023) into how the European Parliament, the Council of the European Union and the European Commission handle requests for public access to legislative documents.

The Ombudsman wanted to examine the practices of the three institutions in handling requests for public access to legislative documents, in particular whether the institutions give full effect to the principle according to which legislative documents benefit from the highest standard of transparency.

For the purpose of its inquiry, the Ombudsman examined the institutions' replies to requests for public access to documents concerning the adoption of three legislative acts:

- the Digital Markets Act[1];
- the Revision of the Emissions Trading Scheme Directive[2]; and
- the Minimum Wage Directive[3].

The Parliament informed the Ombudsman that it received only five requests for public access falling within the scope of the inquiry, which the Ombudsman considered not representative, and therefore did not pursue the inquiry into Parliament's practices. In contrast, the Council identified 101 initial requests for public access to legislative documents and three confirmatory applications relevant to the Ombudsman's inquiry, while the Commission identified 58 initial replies and five confirmatory decisions relevant to the inquiry.

The Ombudsman then inspected a sample of the Council's initial replies (47 replies) and all the Commission's initial replies (58 replies) and confirmatory decisions (five decisions), as well as some of the documents the Commission identified as falling within the scope of several requests.

The Ombudsman examined the arguments provided by the Council and the Commission. The Ombudsman notes that the main exceptions invoked by the Commission when protecting

[1] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector, OJ L 265/1.

[2] Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system, OJ L 130/134.

[3] Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union, OJ L 275/33.

(parts of) the documents concerned: (i) ongoing decision-making processes[4]; (ii) commercial interests[5]; (iii) personal data[6]; and iv) legal advice[7]. In a few cases involving particular circumstances, the Commission invoked other exceptions, such as the protection of international relations[8].

The Commission relied, *inter alia*, on the arguments that disclosing preliminary views and internal discussions could deter staff from expressing their views frankly, lead to public misinterpretation and speculation, and expose the Commission to external pressure. The Commission also argued that the legislative proposals related to the documents were highly sensitive. Additionally, the Commission argued that the documents requested contained sensitive business information, such as business strategies, the competitive situation on the market and other commercial interests of companies and intellectual property. As regards the protection of legal advice, the Commission argued that disclosing the relevant documents would reveal legal assessments of a preliminary nature intended for internal discussions, thereby undermining its ability to receive frank and objective advice. The Commission also referred to the risk of litigation regarding the legal basis of the Digital Markets Act.

The Ombudsman points out that neither the Council nor the Commission explicitly stated in the inspected replies that the documents requested are legislative in nature. The Ombudsman notes that neither the Council nor the Commission identified an overriding public interest in disclosure in any of the cases examined.

The Ombudsman also notes that the Commission experienced delays in handling several requests under the time limits provided for under Regulation (EC) No 1049/2001. The delays varied in length, with some being relatively short and others being more substantial. Delays occurred at both the initial and confirmatory stages of the process.

II. THE OMBUDSMAN'S INQUIRY AND ASSESSMENT CONCERNING THE COMMISSION'S PRACTICE

During its inquiry, the Ombudsman examined:

- the time taken by the Commission to reply to requests for public access to legislative documents;

- whether the Commission took into account the legislative nature of the documents;

- how the Commission applied the exceptions to public access; and

- whether the Commission assessed the existence of an overriding public interest, where relevant.

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4 First subparagraph of Article 4(3) of Regulation (EC) No 1049/2001.
5 First indent of Article 4(2) of Regulation (EC) No 1049/2001.
6 Article 4(1)(b) of Regulation (EC) No 1049/2001.
7 Second indent of Article 4(2) of Regulation (EC) No 1049/2001.
8 Third indent of Article 4(1)(a) of Regulation (EC) No 1049/2001.

A) The time taken to reply to requests for access to legislative documents

As regards the time taken to reply to requests for access to legislative documents, the Ombudsman concludes in its decision that the Commission is incurring significant delays in handling requests for public access to legislative documents and recalled the importance of providing access to legislative documents in a timely manner to enable applicants to participate in the legislative process. The Ombudsman recalls that it dealt with the delays in the processing of requests for public access to documents in a previous inquiry, OI/2/2022/OAM, in which the Ombudsman urged the Commission to address the issue as a matter of priority[9].

B) Taking into account the legislative nature of the documents requested

The Ombudsman argues that the Commission did not explicitly state that the documents requested are legislative in nature and stated that, '[a]s such, it is not clear to what extent the institutions took into account in their assessments the fact that the documents are "legislative documents", to which the highest standard of transparency applies'. In the Ombudsman's view, the Commission did not consider the case-law according to which these exceptions must be interpreted and applied all the more strictly with regard to legislative documents.

In the Ombudsman's view, the Commission's replies to requests for public access to documents should state explicitly whether the documents requested are 'legislative documents' as 'this would reassure applicants that the institutions have taken the requested documents' nature into account'. According to the Ombudsman '[i]t could also make the institutions more aware and sensitive to their duty to implement the highest standard of transparency and interpret the exceptions to public access particularly strictly when it comes to legislative documents'.

C) Application of the exceptions to public access to legislative documents

The Ombudsman considers that Commission disclosed a large number of legislative documents, but also applied exceptions to public access too broadly, in particular the exception protecting commercial interests, and failed to provide concrete evidence of actual risks that the disclosure of the documents requested would entail for the protection of the decision-making process and legal advice.

The Ombudsman argues that in most of the inspected replies, refusing public access to documents based on the need to protect ongoing decision-making processes (first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001) and legal advice (second indent of Article 4(2) of Regulation (EC) No 1049/2001), the Commission used 'generic' or 'vague, abstract, and unsubstantiated' arguments that have been dismissed by the Courts, such as:

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[9] Special Report of the European Ombudsman in her strategic inquiry concerning the time the European Commission takes to deal with requests for public access to documents (OI/2/2022/OAM), https://www.ombudsman.europa.eu/fr/special-report/en/175425.

- ‘challenges in reaching political agreement on legislative proposals within EU institutions and among the Member States;

- “external pressure” exerted on the institutions;

- the need to retain an internal space for reflection;

- potential public misunderstandings that the disclosed documents might cause; and/or

- the sensitivity of the legislative proposals at stake,

- challenges in receiving objective legal advice, in the future, on legislative proposals raising legal questions’.

The Ombudsman takes the view that these arguments are standard elements of the democratic law-making process and have been dismissed by the EU Courts in similar cases. The institutions must provide concrete evidence of a specific risk to justify non-disclosure, rather than relying on generic arguments, and recalls the case-law according to which EU institutions must carry out a specific and individual assessment of the documents requested[10]. In the Ombudsman’s view, rather than conducting a document-by-document assessment, the Commission applied, *de facto*, a presumption of non-disclosure to ‘some categories of legislative documents related to ongoing decision-making procedures’, without clarifying which categories of documents would be at stake.

The Ombudsman notes that the Commission received a substantial number of submissions from third parties while preparing the proposal for the Digital Markets Act proposal. However, when asked to disclose these submissions, the Commission often refused, invoking the need to protect commercial interests (first indent of Article 4(2) of Regulation (EC) No 1049/2001). The Ombudsman argues that the Commission applies the exception protecting commercial interests too broadly and considers that the exception protecting commercial interests should only be applied in exceptional circumstances, where disclosure would reveal genuinely sensitive information such as intellectual property, business secrets, or financial information. According to the Ombudsman, ‘[i]n certain cases examined in the context of this inquiry, the redactions were limited and appeared justified to protect the companies’ business secrets. However, the Commission's practice is inconsistent, and in some cases, it has refused to disclose entire documents that do not contain sensitive information such as business strategies, know-how or other commercial secrets’.

Moreover, the Ombudsman argues that the involvement of interest representatives is a normal part of the legislative process, but believes that for it to be fair, all interest groups should have equal access to information.

The Ombudsman also notes that the most frequently applied exception to public access invoked by the Commission was the protection of personal data. However, the Ombudsman

[10] Judgment of the Court of 4 September 2018, *ClientEarth* v *European Commission*, C-57/16 P, EU:C:2018:660, paragraph 120.

did not see any issue in the way the Commission applied this exception and noted that applicants rarely requested or justified the need for such data to be disclosed in the public interest.

D) Assessment of the existence of an overriding public interest

As regards the assessment of the existence of an overriding public interest in disclosure, the Ombudsman recalled that the EU institutions are required to assess if there is an overriding public interest in disclosing documents, even if exceptions to public access apply. However, the Commission often simply states that no such interest exists, without providing a detailed analysis or reasoning, making it difficult for individuals to challenge its decisions.

The Ombudsman argues that in the inspected replies, the Commission 'did not tend' to detail its assessment of whether an overriding public interest exists. According to the Ombudsman, the Commission 'merely concluded that "no overriding public interest has been identified". As such, it is not clear whether the institutions conducted an analysis of what the public interest in disclosure could be and, where it exists, why it did not override the interests the institutions are seeking to protect. Individuals requesting access cannot therefore scrutinise or challenge the reasons underlying the institutions' assessment. […]'.

IV. THE OMBUDSMAN'S CONCLUSIONS AND SUGGESTIONS FOR IMPROVEMENT

On 3 December 2024, the Ombudsman issued its conclusions on the own-initiative inquiry. On the basis of its inquiry, the Ombudsman concluded that:

'The files inspected in this inquiry show that the Commission is incurring significant delays in handling requests for public access to legislative documents. The Ombudsman has dealt with this matter in her previous inquiry OI/2/2022/OAM, in which she urged the Commission to address the issue of delays as a matter of priority. These delays have particularly serious consequences when it comes to legislative documents.

The files inspected in this inquiry show that the Council and the Commission are failing to give full effect to the principle of legislative transparency, as set out in the EU Treaties, Regulation 1049/2001, and related case-law. […]'

The Ombudsman made the following suggestions for improvement:

'The Council and the Commission should:

- explicitly state in their replies to public access requests whether the requested documents are 'legislative documents', to which the highest standards of transparency apply;

- promptly disclose the requested legislative documents, notwithstanding the political sensitivity of proposed legislation and even if doing so would – for example - give rise

to external pressure, as these are generic elements of any democratic law-making process;

- ensure that they refuse public access to legislative documents in truly exceptional circumstances only, that is, where they identify a concrete (non-generic) risk to the interests explicitly protected, which can be demonstrated by tangible evidence; otherwise, the requested documents must be disclosed;

- demonstrate in their replies that they have carried out a genuine analysis regarding the existence of an overriding public interest in disclosure and, in any case, engage with any arguments made by the applicants in this regard;

- ensure that third parties that make submissions in the context of legislative procedures are aware that their submissions can in principle be disclosed to the public and that any commercially-sensitive information be clearly indicated in these submissions in advance, along with a clear explanation regarding why it is to be considered confidential'.

V. THE COMMISSION'S REPLY TO THE OMBUDSMAN'S DECISION AND SUGGESTIONS FOR IMPROVEMENT

The Commission will address each suggestion separately. The Ombudsman's findings regarding the elements examined during its inquiry, which led to the suggestions outlined in its decision, will be also addressed in the sections below.

a) 'explicitly state in their replies to public access requests whether the requested documents are 'legislative documents', to which the highest standards of transparency apply'

The Commission takes note of the Ombudsman's views. However, for the reasons explained below, the Commission considers that the suggestion to explicitly state whether the documents requested are 'legislative documents' in its replies to requests for public access to documents is not based on a requirement established under Regulation (EC) No 1049/2001 or the jurisprudence of the European Union courts and would not bring an added value to the handling of the request for public access.

Firstly, Regulation (EC) No 1049/2001 sets out the rules for public access to European Parliament, Council, and Commission documents. While it establishes the general principles, procedures and limits for accessing documents, including the requirement to make legislative documents directly accessible to the greatest possible extent[11], it does not specifically require the identification of documents as 'legislative' in responses to requests for access. The Court of Justice of the EU has not established a requirement for the institutions to explicitly state whether they consider that the document requested is 'legislative' either.

[11] Article 12(2) of Regulation (EC) No 1049/2001.

Indeed, when granting access to a document, the institutions are not obliged to explain the reason for such disclosure, nor to explicitly state, as far as legislative documents are concerned, that the documents requested, which have been disclosed in application of the high standards of transparency, are 'legislative in nature'. The full or widest possible disclosure is a guiding principle that should be adhered to irrespective of the nature of the document. When full access is not possible, the Commission already informs applicants of the reasons underlying the outcome of the request, including a detailed statement of reasons for any refusal and the means for redress. Moreover, with few exceptions, all documents disclosed by the Commission are made directly accessible in EASE Portal, in line with Article 12(2) of Regulation (EC) No 1049/2001, regardless of whether they are legislative documents.

Secondly, Article 12(2) of Regulation (EC) No 1049/2001 defines legislative documents as those 'drawn up or received in the course of procedures for the adoption of acts which are legally binding in or for the Member States'. In its judgment in case C-57/16, the Court of Justice clarified that legislative documents cover 'not only acts adopted by the EU legislature, but also, more generally, documents drawn up or received in the course of procedures for the adoption of acts which are legally binding in or for the Member States'[12]. Considering that the regulation and related case-law already establish which documents must be considered as 'legislative', the Commission takes the view that explicitly stating the categorisation of documents in its replies to requests for public access to documents would not bring any added value to the processing of requests.

Thirdly, when assessing a request for public access to documents, the Commission must determine the level of access to be granted, taking into account the content of the documents requested and any applicable exceptions to the right of public access to documents. The legislative nature of the documents requested is indeed a factor that the Commission always considers. As a result, the nature of documents as 'legislative' is already an integral part of the Commission's internal thinking and decision-making processes. Therefore, categorising the documents as 'legislative' in every reply to requests for public access would not increase the level of awareness of the Commission staff regarding the high transparency standards applicable for these documents, as the Ombudsman suggests in its decision, nor would it lead to a different outcome in terms of access for applicants.

Consequently, in the Commission's view, explicitly stating in every reply whether the documents at stake are legislative or not would not add significant value to the transparency and accountability of the EU institutions.

The Commission is committed to applying the highest standards of transparency, as required by the EU's access to documents rules. The Commission will continue to carefully consider each request for public access to documents, including legislative documents, and apply the relevant rules and principles to determine the level of access to be granted.

b) 'promptly disclose the requested legislative documents, notwithstanding the political

[12] *ClientEarth* v *Commission*, Case C-57/16 P, cited above, paragraph 85.

sensitivity of proposed legislation and even if doing so would – for example - give rise to external pressure, as these are generic elements of any democratic law-making process'

c) ***'ensure that they refuse public access to legislative documents in truly exceptional circumstances only, that is, where they identify a concrete (non-generic) risk to the interests explicitly protected, which can be demonstrated by tangible evidence; otherwise, the requested documents must be disclosed'***

The Commission takes note of the Ombudsman's call for further transparency as regards legislative documents. The decision of the Ombudsman in this inquiry has been circulated to Commission services for their information and future reference.

Suggestions b and c will be addressed jointly.

The Commission is aware of the importance of transparency in the legislative process and agrees that the EU decision-making process is influenced by a range of factors and external pressure by third parties. Furthermore, the Commission agrees that transparency is essential for ensuring the legitimacy and accountability of the EU decision-making process. The Commission strives to provide citizens with timely and accurate information about its activities and decisions and has consistently demonstrated its commitment to transparency and accountability in its legislative work.

The Commission proactively publishes a wide range of documents related to its legislative proposals, including impact assessments, stakeholder consultations, and legislative texts. This information is made available to the public through various channels, including the Commission's website, the Register of Commission documents ('RegDoc') and the EUR-Lex database. The Commission remains transparent when preparing its decisions, notably as regards who influences them, through the Transparency register[13]. The Register facilitates public scrutiny of the EU's law-making and policy implementation.

The Commission also maintains a register of committees, known as comitology committees, that oversee the Commission when it adopts implementing acts. The register contains a list of these committees, as well as background information and documents relating to their work[14].

Furthermore, the Commission, together with the Council of the European Union and the European Parliament, set up the EU Law Tracker in 2024 to facilitate traceability of the various steps in the EU legislative process. The general public can thus consult and follow the legislative process via this portal[15].

The Commission notes that among the Commission's initial and confirmatory decisions inspected by the Ombudsman (58 initial replies and five confirmatory decisions), the Commission granted full or wide access (subject only to the redaction of personal data) to the

[13] https://commission.europa.eu/about/service-standards-and-principles/transparency/transparency-register_en.
[14] https://ec.europa.eu/transparency/comitology-register/screen/home?lang=en.
[15] https://law-tracker.europa.eu/homepage?lang=en.

documents requested in 20 initial replies. Partial access was granted in 20 initial replies. Access was refused in only three initial replies. In 15 initial replies and in one confirmatory decision no relevant documents were identified. In four confirmatory decisions, partial access was granted. These figures show that overall, the Commission was very transparent in dealing with the requests concerned by the Ombudsman inquiry.

The Commission takes note of the Ombudsman's views regarding the alleged lack of concrete evidence of risk to the decision-making process and legal advice in the inspected files. The Commission considers that it is appropriate to take into account the specific circumstances of each case. Every legislative proposal is unique, and the potential risks associated with disclosure can vary depending on the subject matter, the stage of the decision-making process, and the interests at stake. Deprived from their context, the risks identified by the institution may give an erroneous impression that they are not relevant or justified in each individual instance.

The Commission must also ensure that the disclosure of documents does not compromise its position in the decision-making processes concerned. This is fully in line with Regulation (EC) No 1049/2001, which states in recital 11 that '[t]he institutions should be entitled to protect their internal consultations and deliberations where necessary to safeguard their ability to carry out their tasks'. Recital 6 expressly refers to the condition of 'preserving the effectiveness of the institutions' decision-making process'. In some cases, a premature disclosure of documents (or parts thereof) may lead to undue external pressure, thus compromising the outcome of the decision-making process and the ability of the Commission to fulfil its role in the legislative process. The Commission would like to underline that in such cases, it undertakes an individual assessment of the documents concerned. Therefore, the analysis reflected in the replies and decisions inspected by the Ombudsman reflect the particular circumstances of the cases examined at the time when the requests were submitted.

As regards the time taken to reply to requests for access to legislative documents, the Commission has already provided detailed elements in response to the European Ombudsman's strategic inquiry OI/2/2022/OAM and would like to refer to the observations provided in that case[16].

d) 'demonstrate in their replies that they have carried out a genuine analysis regarding the existence of an overriding public interest in disclosure and, in any case, engage with any arguments made by the applicants in this regard'

The Commission would like to underline that as clarified by the Union courts, it is for the applicants to demonstrate the existence of an overriding public interest of disclosure[17]. In practice, applicants often fail to provide concrete and convincing arguments to support their

[16] https://www.ombudsman.europa.eu/en/doc/correspondence/en/174167.

[17] Judgment of the General Court of 9 October 2018, *Anikó Pint* v *European Commission*, ECLI:EU:T:2018:662, paragraph 48; Judgment of the General Court of 23 January 2017, *Association Justice & Environment, z.s* v *European Commission*, EU:T:2017:18, paragraph 53; Judgment of the General Court of 5 December 2018, *Falcon Technologies International LLC* v *European Commission*, T-875/16, EU:T:2018:877, paragraph 84.

claims. Instead, they may simply invoke the principle of transparency, or argue that an overriding public interest exists, without providing any substantive evidence or reasoning to back up their assertion. However, the Commission cannot rely on generic and unsubstantiated arguments to establish the existence of a public interest in disclosure prevailing over the interests protected by the exceptions under Article 4(2) and 4(3) of Regulation (EC) No 1049/2001. As clarified by the Union courts, these general arguments do not provide an appropriate basis for establishing that the principle of transparency can prevail over the reasons justifying the refusal to disclose the documents requested[18], even if the request concerns a legislative file[19].

The Commission already engages with the arguments provided by applicants in case the documents cannot be fully disclosed[20]. Even in cases where the applicants do not put forward concrete arguments to show the existence of such an overriding public interest, the Commission communicates if it has been able to establish the existence of any overriding public interest in the disclosure of the document requested, which is a clear indication that the Commission services have conducted such an analysis.

e) 'ensure that third parties that make submissions in the context of legislative procedures are aware that their submissions can in principle be disclosed to the public and that any commercially-sensitive information be clearly indicated in these submissions in advance, along with a clear explanation regarding why it is to be considered confidential'.

The Commission considers that a timely consultation with third parties is important to swiftly understand the position of the third parties from which the documents requested originate. However, the Commission is not convinced that proactively requesting the position of the third parties prior to any request for public access would reduce the need to consult third-parties or speed up the consultation process.

Firstly, it should be recalled that in the absence of a request for public access to documents and a formal consultation under Article 4(4) of Regulation (EC) No 1049/2001, there is no basis to require third parties to flag their commercially sensitive data in their submissions to the Commission. Indeed, the approach suggested by the Ombudsman relies fundamentally on the cooperation of third parties in accurately identifying and marking commercially sensitive information. However, third parties may not always be willing or able to cooperate. They could over-designate information as commercially sensitive, which could lead to unnecessary restrictions on access to information and create more work for the institutions to review and verify these designations. In this regard, the Ombudsman's decision does not explain what the

[18] Judgment of the Court of Justice of 14 November 2013, *Liga para a Protecção da Natureza (LPN) and Republic of Finland* v *European Commission*, Joined Cases C-514/11 P and C-605/11 P, EU:C:2013:738, paragraph 93, Judgment of the General Court of 6 February 2020, *Compañía de Tranvías de la Coruña, SA* v *European Commission*, T-485/18, EU:T:2020:35, paragraph 81.

[19] Judgment of the General Court of 15 September 2016 in case T-755/14, *Herbert Smith Freehills* v *Commission* [similar to the reasoning in T-710/14, paragraphs 69 and 72], paragraph 74.

[20] See for instance the Commission replies in cases GESTDEM 2021/6451 and GESTDEM 2022/725, inspected by the Ombudsman during this inquiry.

follow-up of to a third-party flagging of information that is not actually sensitive should be in its view, or how to reconcile the objective of reducing the burden by proactively informing third parties with the increased work derived from such an approach.

If third parties were to take a position on the disclosure of the documents at the time of submission, the Commission would need to verify and validate the accuracy of the markings made by third parties, which could be a time-consuming and resource-intensive process particularly if no request for public access has been made. The institutions would also need to ensure that the explanations provided by third parties for designating information as commercially sensitive are sufficient and valid. This would increase the workload of the Commission's services, delay the processing of public access requests and undermine the goal of speeding up the process.

Therefore, the Commission is convinced that the current practice, which is founded on a long-standing practice under Regulation (EC) No 1049/2001, is the most appropriate approach. Indeed, when consulting third parties under Article 4(4) of Regulation (EC) No 1049/2001 the institution engages in a dialogue and may overrule the objections of the third party if needed.

Secondly, even if the Commission informed third parties about the possible disclosure of their submissions in case access thereto were requested under Regulation (EC) No 1049/2001, this would not spare the institution from the duty to consult under Article 4(4) of Regulation (EC) No 1049/2001 if it is unclear whether the document requested must be disclosed or not. Indeed, the position of a third party expressed following a spontaneous/autonomous request by the Commission outside the framework of Regulation (EC) No 1049/2001 would not constitute, in the Commission’s view, an agreement from that third party with the disclosure of the document originating from it, if requested under Regulation (EC) No 1049/2001.

Furthermore, the Ombudsman’s suggestion does not seem to take into account that the sensitivity of a third-party submission may not be the same at the time of the submission when compared to the legal and factual circumstances existing at the time when access to the document is requested. It is also unclear how the Ombudsman’s suggestion would guarantee the procedural rights of third parties if they disagreed with the disclosure of the documents originating from them.

Thirdly, requesting any interested third parties to indicate in their submissions any commercially sensitive information, without any specific request for public access to their documents, would be unnecessarily burdensome and could disproportionately affect smaller organisations or individuals who may not have the necessary resources or expertise to undertake such a review on a systematic basis and without the clear legal framework provided under Regulation (EC) No 1049/2001.

The Commission considers that these additional administrative burdens, potential for over-designation, and risk of inconsistent application would likely have no potential benefit and could ultimately lead to delays and inefficiencies in the process.

The Commission has already taken steps to enhance transparency in its interactions with third parties. It has a clear framework in place to consult stakeholders and ensure that their views are taken into account in the context of legislative processes.

Indeed, the Commission actively engages with stakeholders, including industry representatives, civil society organisations, and individual citizens, through public consultations[21]. These consultations provide an opportunity for stakeholders to contribute to the development of EU policies and legislation, and the Commission considers their input when shaping its proposals.

Moreover, the Commission has concluded a Memorandum of Understanding with the European Parliament and the Council to facilitate consultations under Regulation (EC) No 1049/2001, including for requests related to legislative procedures, and to avoid conflicting decisions by the institutions.

For the Commission
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[21] https://ec.europa.eu/info/law/better-regulation/have-your-say_en.