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OI/6/2013/KM
E2014-190064

The President

306492 03.04.2014

Ms Emily O'Reilly
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Own-initiative inquiry OI/6/2013/KM

Dear Madam Ombudsman,

Thank you for your letter dated 11 December 2013 regarding the own-initiative inquiry you are conducting, in line with Article 228 of the Treaty on the Functioning of the European Union (TFEU). Your inquiry concerns potential problems met by the three main EU institutions with regard to implementation of Regulation (EC) n° 1049/2001, and specifically the time limits for response to applications, as set out in Articles 7 and 8 therein.

In your letter, you note that Parliament, in its annual reports on the implementation of Regulation (EC) n° 1049/2001, provides a wide range of statistics, but does not provide specific data on the time taken to respond to applications for access to documents.

Preliminary remarks

As a preliminary remark, I would like to point out that up until now, and in general terms, Parliament has not experienced major problems with respecting the time limits imposed by the Regulation. Indeed, Parliament handles a limited number of requests for not-previously disclosed documents, between 90-95% of documents on Parliament's electronic register are directly accessible to the public. Therefore, our institution does not encounter any *"problems of a systemic kind"* which you refer to in your letter.

Where an in-depth examination of a document(s) requested is necessary, Parliament must consult the various services or parties involved. In such cases, Parliament must first identify the document(s), and then consult internally with the responsible services, including the service that is the author of the document, the legal service and/or the officer responsible for data protection, as well as any third parties involved and/or translation services. Time limits imposed by the above-mentioned Regulation can, in such cases, present real practical difficulties for Parliament, especially since the conditions for an extension of the deadline are only exceptionally applicable. From a

purely administrative point of view and essentially to allow for proper internal consultation procedures, it may be advisable in the future to revisit the deadlines foreseen by the Regulation (EC) n° 1049/2001, in order to take into account the practical experiences of the institutions.

In general and in accordance with the first paragraph of these preliminary remarks, Parliament replies to the applications it receives within the 15 working days time limit stipulated in the Regulation. This goes some way to explaining why - up until now - our Institution has not sought to produce data on the exact number of working days taken to respond to applications. Analysis of a random sample of applications received in 2010-2012 shows that Parliament responds in an estimated average of **5 working days**.

Regarding your specific request concerning the years **2010**, **2011** and **2012**, information is below:

1. Initial applications

(i) The number of initial applications received, concerning requests for non-previously disclosed documents, is as follows:

2010	2011	2012
268	289	166

The number of applications received in total (concerning previously disclosed or non-previously disclosed documents) is 1139, 1161 and 777 respectively, for the years 2010-2012.

(ii) As mentioned above, Parliament does not produce data on the exact number of working days taken to respond to each application. However, on the basis of a random sample of applications received in 2010-2012, Parliament responds in an estimated average of **5 working days**.

With regard to those cases with extended time limit in 2010-2012, the number of working days to respond (from the registration of the initial application to the sending of the decision), in the three cases for which Parliament took the longest time to reply, was **33**, **29** and **28** respectively.

(iii) During the period under consideration, Parliament extended the time limit, in accordance with Article 7(3) of the Regulation, on **12** occasions and the average number of working days for such responses was **25**.

(iv) Parliament does not currently have the technical tools available to extract all the data concerning past cases, once those cases have been closed. However, a random sample of cases pending on **25 November 2013** for example shows that of **15** cases pending, none of them had passed the time limit provided for in the Regulation.

2. Confirmatory applications

(i) The number of confirmatory applications received by Parliament is as follows:

2010	2011	2012
5	4	6

(ii) Of the 15 confirmatory applications received during the period under consideration, the number of working days taken to respond is as follows (the three cases that took the longest are in bold): 15, 12, 15, 18, 25, 27, 15, **31,** 18, 27, 23, **30**, 25, 15, **30.**

(iii) During the period under consideration, Parliament extended the time limit in accordance with Article 8(2) of the Regulation on **10** occasions, and the average number of working days taken to respond in those cases was **25.**

(iv) On 15 November 2013 there was **one** pending confirmatory application, which was received by Parliament on 11 November and, in consequence, the time limit provided by the Regulation had not expired.

Practical experience of implementing the Regulation shows that when responding to confirmatory applications, Parliament extends the limit of 15 working days (in accordance with Article 8(2) of the Regulation) in 2 out of 3 cases. This scenario would seem to suggest that, in line with the preliminary remarks made at the beginning of this letter, 15 working days is an unrealistic time limit when in-depth examination of documents is needed by the relevant services, as it is the case in confirmatory applications.

In fact, the Courts have held that only the decision on the confirmatory application is actionable, either by recourse to the Courts or through a complaint to the Ombudsman. In consequence, the level of preparation, the need for proper internal consultations and the reasoning provided to the applicant are considerably greater for confirmatory decisions than for initial decisions. For example: "*if the applicant puts forward factors capable of casting doubt on whether the first refusal was well founded, the Institution is obliged, when replying to a confirmatory application, to state why those factors are not such as might warrant a change in its position. Otherwise, the applicant would not be able to understand the reasons for which the authority of the reply to the confirmatory application has decided to confirm the refusal on the same grounds.*"[1]

3. Fair solution in accordance with Article 6(3) of the Regulation

Parliament seldom makes use of the fair solution option provided for in Article 6(3) of the Regulation and can therefore provide no statistics in this regard. Indeed this possibility is used in very few cases where requests are made to access a large amount

[1] Case T-188/98, *Kuijer vs Council I*, [2000] ECR II-1959, §46.

of paper documents, which are not available in electronic format. In such cases, the applicant is invited to consult the documents on Parliament premises.

I hope this first reply is fully satisfactory in the context of your inquiry. Naturally, our institution remains entirely at your disposal for further questions or clarifications.

Yours sincerely,

Martin Schulz