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COUNCIL OF
THE EUROPEAN UNION

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THE SECRETARY GENERAL

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Médiateur européen

1 7 MARS 2014

Date d'arrivée

**Subject: Your letter of 11 December 2013 relating to your own-initiative inquiry
OI/6/2013/KM concerning the European Parliament, the Council of the European
Union and the European Commission**

Dear Ms O'Reilly,

Thank you for your letter of 11 December 2013 relating to your own-initiative inquiry OI/6/2013/KM concerning the European Parliament, the Council of the European Union and the European Commission,

In your letter, you refer to the Decision, by which your predecessor, Mr Diamandouros, closed his own-initiative inquiry 3/2011/KM on 13 June 2012, which concerned the time limits for processing confirmatory applications for access to Council documents. In his Decision, the previous Ombudsman stated his intention to open a new own-initiative inquiry with a view to assessing the practical effects of the measures which the Council had envisaged and listed in its reply to the inquiry.

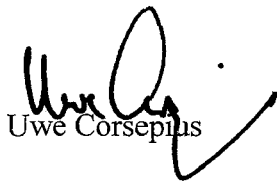
You also mention that it has come to your attention, through the complaints handled by your office and from the case-law of the Court, that the three institutions of the EU most concerned by the application of Regulation 1049/2001, i.e. the European Parliament, the Council and the Commission "*may encounter problems of a systemic kind in respecting the time limits provided for in the Regulation.*" You have therefore decided to open a new own-initiative inquiry in order to examine whether such problems exist and, if so, how they might best be tackled.

As a first step, you ask the Council to provide you with information on matters relating to the handling of initial applications, confirmatory applications and fair solutions in accordance with Article 6(3) of Regulation 1049/2001 during 2010, 2011 and 2012.

I am pleased to provide you the requested information in the Annex to this letter. It is provided in the form of figures and without much additional explanation, as the Council has understood that it will have the opportunity to provide any clarifications needed at a later stage.

I look forward to engaging in further discussions on this matter and to providing additional information as the inquiry progresses.

Yours sincerely,



Uwe Corsepius

HANDLING OF INITIAL APPLICATIONS, CONFIRMATORY APPLICATIONS AND FAIR SOLUTIONS IN ACCORDANCE WITH ARTICLE 6(3) OF REGULATION 1049/2001 DURING 2010, 2011 AND 2012

The Council would first like to indicate that for the purposes of Regulation (EC) No 1049/2001, and in line with Article 3(1) of Regulation (EEC, Euratom) No 1182/71 determining the rules applicable to periods, dates and time limits, the day during which a new request for public access is registered by the Transparency service of the General Secretariat of the Council is not counted for the purposes of calculating the time limit in question. However, when data is extracted from the Council's database, including for the purposes of replying to this own-initiative inquiry, the database also counts the day of the registration of the application. All time periods indicated below therefore contain one day too much in comparison to what is actually the case when calculating the delay in accordance with the applicable rules.

1. HANDLING OF INITIAL APPLICATIONS IN 2010, 2011 AND 2012

- i. During the years covered by the inquiry, the Council received the following number of initial applications¹:

2010	2011	2012
2 764	2 116	1 871

- ii. On average, the following number of working days passed from the registration of the initial application until the final decision was taken²:

2010	2011	2012
16,44	15,46	15,65

¹ These figures also include initial requests for access received by the European Council as those are also handled by the General Secretariat of the Council.

² The figures indicated in the Council's 2010, 2011 and 2012 Annual reports on the implementation of Regulation 1049/2001 also include the applications for which a fair solution was sought with the applicant in accordance with Article 6(3) of Regulation 1049/2001. This is why they differ from the figures mentioned here.

In the three cases with the longest processing time, the number of working days needed for completing the handling of the request was as follows¹:

2010	2011	2012
182	146	89
162	115	89
152	109	61

The Council extended the time limit in accordance with Article 7(3) of Regulation 1049/2001 in the following number of cases:

2010	2011	2012
773	513	452

In cases where the time limit had been extended in accordance with Article 7(3) of Regulation 1049/2001, the average number of working days needed for completing the handling of the request was as follows:

2010	2011	2012
30,31	29,27	28,58

- iv. All initial applications received by the Council in 2010, 2011 and 2012 were processed and closed by the date of this letter, none of them remain pending. No initial applications received in 2013 are pending, either.

¹

The requested documents were examined in batches, the applicants thus received replies from the Council on a regular basis. The number of days indicated is calculated by reference to the date where the applicant got the last batch of documents from the Council.

2. HANDLING OF CONFIRMATORY APPLICATIONS IN 2010, 2011 AND 2012

- i. During the three years covered by the inquiry, the Council received the following number of confirmatory applications:

2010	2011	2012
28	27	23 ¹

- ii. On average, the following number of working days passed from the registration of the confirmatory application until the final decision was taken:

2010	2011	2012
26,96	28,30	27,90

In the three cases with the longest processing time, the number of working days needed for completing the handling of the confirmatory request was as follows:

2010	2011	2012
46	42	45
34	40	39
33	40	31

- iii. The Council extended the time limit in accordance with Article 8(2) of Regulation 1049/2001 in the following number of cases²:

2010	2011	2012
25	24	20

¹ This figure includes one confirmatory application introduced to the European Council.

² The number of confirmatory applications received in 2010 and 2011 for which the time limit was extended differs very slightly from the numbers given in the Council's 2010 and 2011 Annual reports on the implementation of Regulation 1049/2001. A clerical error had occurred when calculating the figures for the annual reports.

In cases where the time limit had been extended in accordance with Article 8(2) of Regulation 1049/2001, the average number of working days needed for completing the handling of the request was as follows:

2010	2011	2012
29,00	27,63	25,95

- iv. All confirmatory applications received by the Council in 2010, 2011 and 2012 were dealt with and closed by the date of this letter, none of them remain pending. No confirmatory applications received in 2013 are pending, either.

3. HANDLING OF FAIR SOLUTIONS IN ACCORDANCE WITH ARTICLE 6(3) OF REGULATION 1049/2001 IN 2010, 2011 AND 2012

- i. During the years covered by the inquiry, the Council relied on Article 6(3) of Regulation 1049/2001 to propose a fair solution to applicants in the following number of cases:

2010	2011	2012
33	20	17

- ii. The option to rely on Article 6(3) of Regulation 1049/2001 to propose a fair solution was in most cases used by the Council shortly after having received the application, in any case at the latest within 15 working days, i.e. before the expiration of the first time limit under Article 7(3) of Regulation 1049/2001. Only in one case in 2011 was the time limit first extended pursuant to Article 7(3) of Regulation 1049/2001 and only later, following contacts with the applicant, did the Council propose a fair solution.

The reasons given by the Council to propose a fair solution were in most cases a very large number of requested documents as well as the particular complexity of the examination incumbent upon the institution.

- iii. On average, the following number of working days passed from the registration of an application for which the Council had proposed a fair solution until the final decision was taken¹:

2010	2011	2012
103,85	79,14	85,63

In the three cases with the longest processing time, the number of working days needed for completing the handling of the request was as follows:

2010	2011	2012
244	245	183
220	197	182
206	194	180

¹ When conferring with applicants in such cases, the Council usually suggests that the requested documents be examined in batches, thus allowing the applicant to receive replies from the Council on a regular basis. The number of days indicated is calculated by reference to the date where the applicant got the last batch of documents from the Council