



TRANSPARENCY IN THE EU INSTITUTIONS – THE COUNCIL EXPERIENCE



- **The path to transparency: A historical outline**
- **The current legislation: Regulation 1049/2001**
- **Transparency of the legislative process**
- **The implementation of Regulation 1049/2001**
- **Case-law on access to documents**



The path to transparency

1. Declaration No 17 (annexed to the Final Act of the Treaty on the European Union at signature in February 1992)

“The Conference considers that transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration. The Conference accordingly recommends that the Commission submit to the Council no later than 1993 a report on measures designed to improve public access to the information available to the institutions”.



2. Birmingham Declaration (16 October 1992): “A Community close to its citizens”

3. Conclusions of the Edinburgh European Council on transparency (12 December 1992):

- Access to the work of the Council**
- Increased information on the role of the Council and its decisions**
- Simplified access to Community legislation**



4. Amsterdam Treaty (1 May 1999)

- **Article 1 TEU: “*an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen*”**
- **Article 255 (1) TEC: “*any natural or legal person residing or having its registered office in a Member state shall have a right of access...*”**



5. Implementation of Article 255 TEC

- The implementing instrument, adopted in May 2001 on the basis of Art. 255(2) is Regulation 1049/2001 which is still in force**



6. Lisbon Treaty

- **Article 1: “*new stage in [...] creating an ever closer union [...], in which decisions are taken as openly as possible and as closely as possible to the citizen.*”**
- **Article 15(3) of the TFEU replaces Article 255 of the EC Treaty: “*any natural or legal person residing or having its registered office in a Member State shall have a right of access to documents of the Union's institutions, bodies, offices and agencies*” → institutional scope extended, no major changes**



Material scope and fundamental principles:

- Regulation 1049/2001 applies to all documents held by an institution, i.e. documents drawn up or received by it and its possession, in all areas of activity of the EU**
- No category of documents excluded from the scope, but**
 - > exceptions to the general right of access**



Access to a document or parts of it is refused if the release of the document would undermine the protection of:

- **public interest, in particular public security and international relations,**
- **privacy and the integrity of an individual,**
- **commercial interests of a natural or legal person, including intellectual property,**
- **court proceedings and legal advice,**
- **the purpose of inspections, investigations and audits;**

or would seriously undermine the decision-making process of the Council.



- **The refusal to disclose a document must be based on an analysis of the harm that would be caused by its disclosure ("*harm test*", Article 4 of the Regulation)**
- **Several exceptions/grounds for refusal may apply**



Review of Regulation 1049/2001

- On 30 April 2008, the Commission made a proposal for a recast of Regulation 1049/2001**
- On 21 March, the Commission made another proposal aiming at aligning Regulation 1049/2001 with the Lisbon Treaty (Article 15(3) of the TFEU)**



- **The Lisbon Treaty: the Council shall meet in public when it deliberates and votes on a draft legislative act (cf. Article 16 (8) TEU and Article 15(2) TFEU)**
- **Articles 7 and 8 of the Council's Rules of Procedure modified accordingly**



Open Council sessions:

- **Council deliberates in public on legislative proposals → documents listed under legislative deliberations and under public deliberations and public debates to be made public**

“Council live” entry on Council's web site: citizens can

- **watch** the **webcast public sessions**
- **consult** all **documents related** to the **public Council sessions**
- **consult** **background notes, press releases**
- **find** **detailed outcomes of the votings**

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Justice and Home Affairs Council

Latest : Foreign Affairs Council
2998th meeting - press conference - February 22nd 2010

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LIVE today

At 10:00 **Live!**
Justice and Home Affairs Council
2998th meeting - debate - Justice

At 12:00 (expected start time)
Other events
[Signing ceremony of the cooperation between Eurojust and the UN Office on Drugs and Crime](#)

At 13:00 (expected start time)
Justice and Home Affairs Council
2998th meeting - press conference (Justice)

Coming up
See the calendar [here](#)

Archived events

Council of the European Union

European Council

Herman Van Rompuy
President of the European Council

Other events

Stopped

2998th meeting - debate - Justice
Live!
Friday, February 26th 2010

Event info
Playback of the current media clip is stopped.
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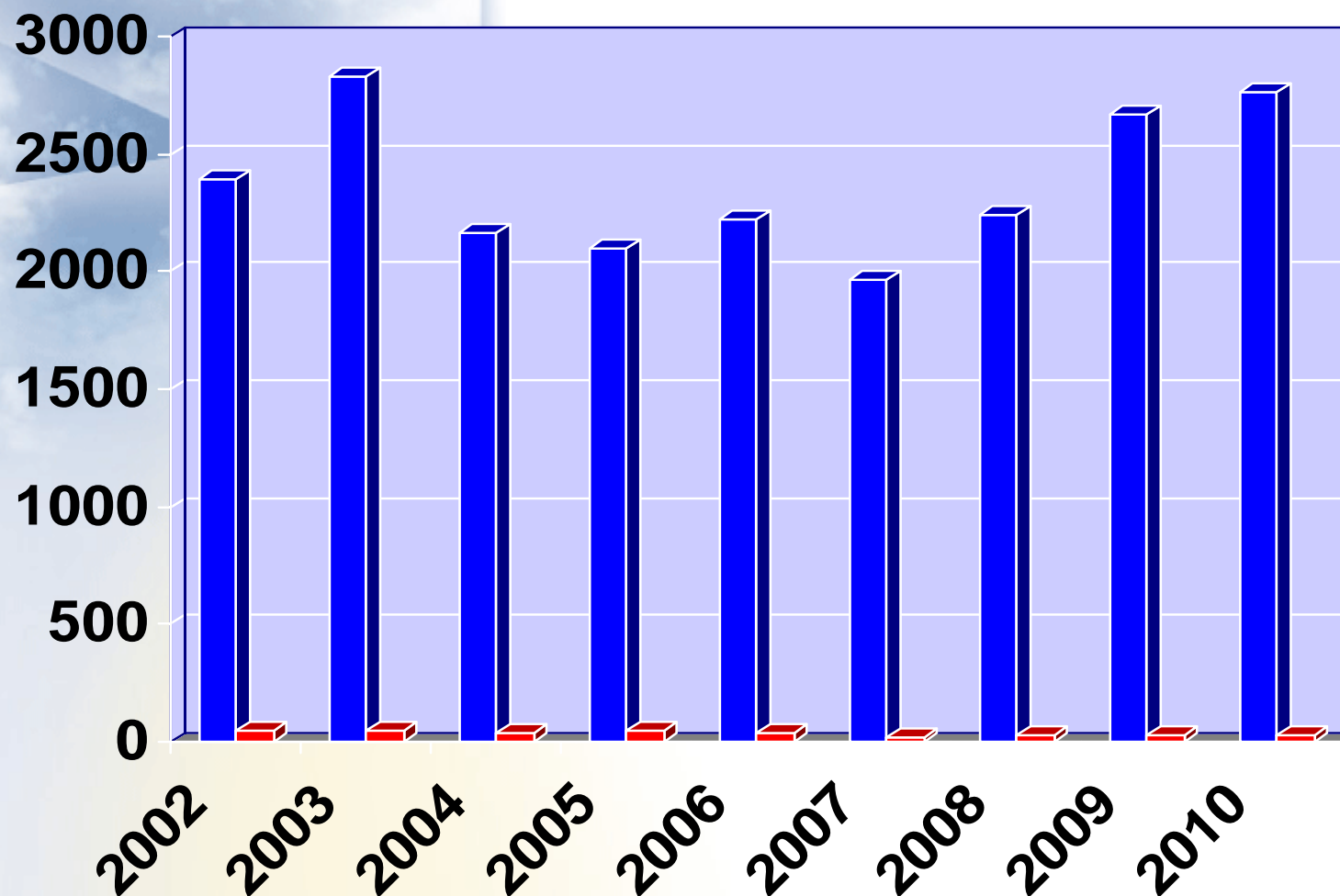
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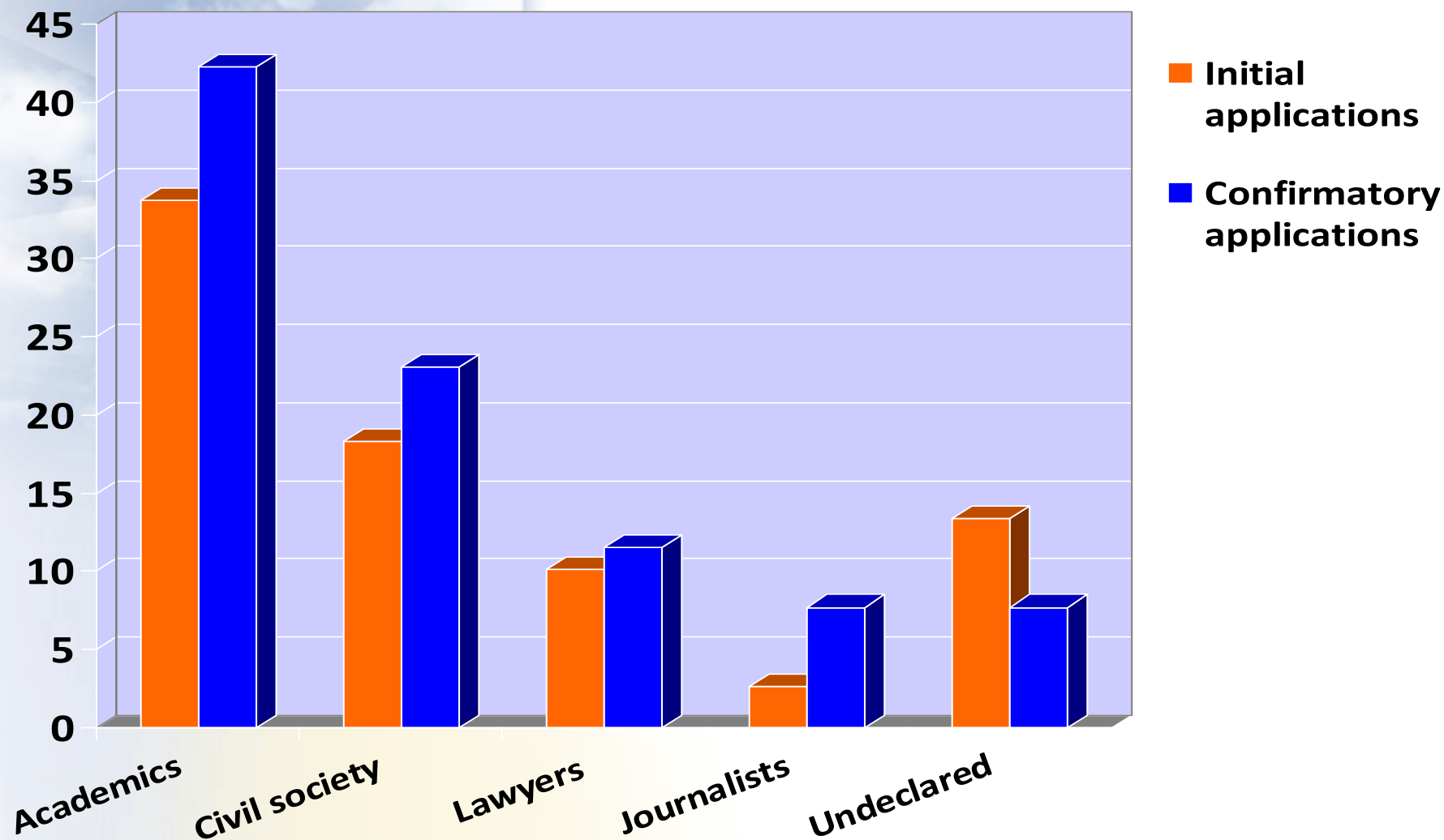
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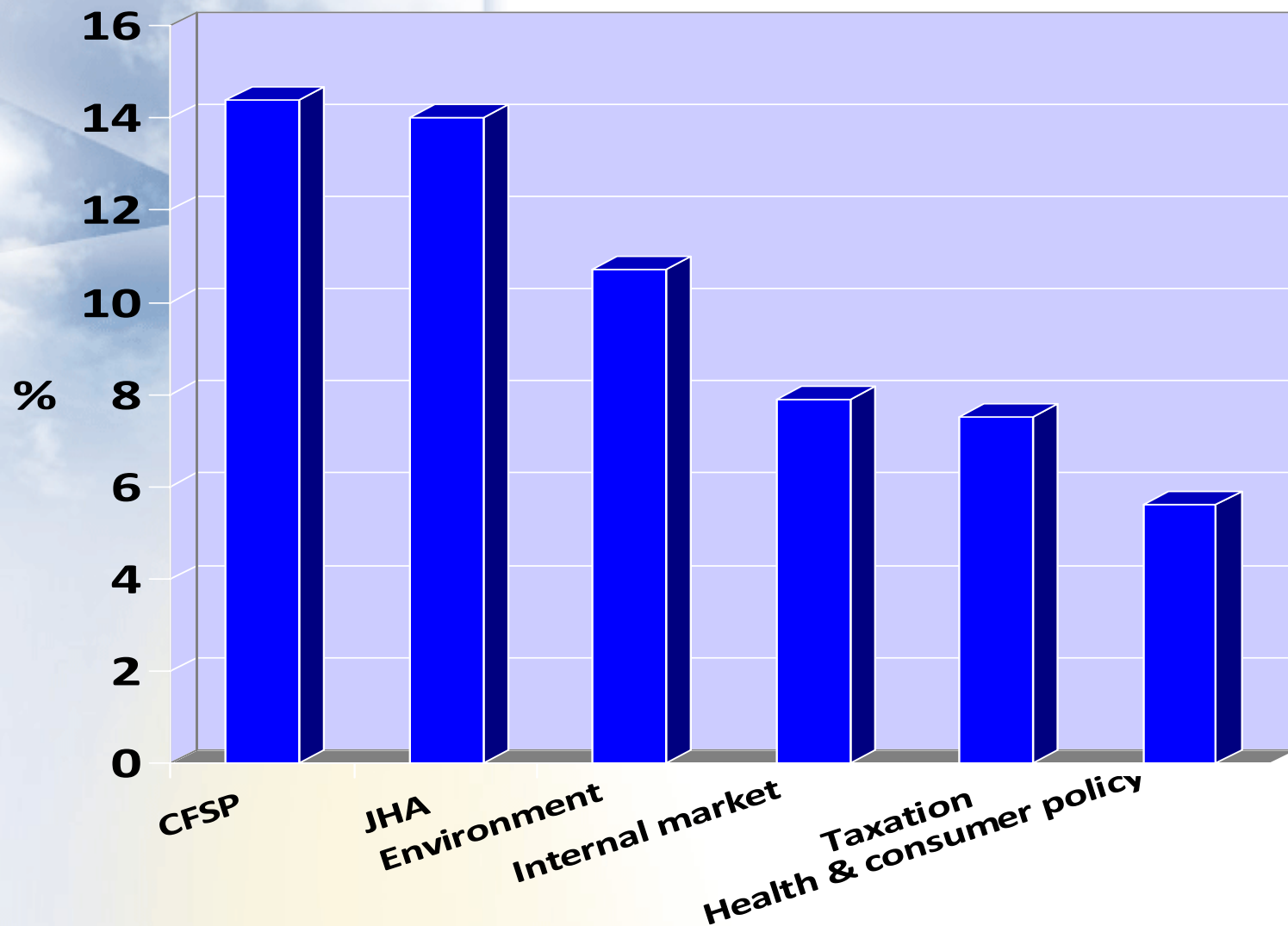
Total number of requests for access to documents received by the GSC (2002-2010)



Professional profile of the applicants in 2010



Fields of interest in 2010





The Public Register of Council documents:

- **operational since 1 January 1999**
- **on 31 December 2010 listed 201 233 documents (EN)**
- **end of 2010: 75,3 % of all documents mentioned in the register are accessible to the public**
- **in 2010, 75,5% of documents produced at the Council were made directly accessible in the register**



- **Processing of initial requests: GSC administrative task**
- **administrative appeal = a confirmatory application, requesting the Council to re-examine its initial refusal**
- **if refusal is maintained, the applicant is entitled to institute court proceedings or to make a complaint to the European Ombudsman**
- **the EU Courts and the European Ombudsman have the right to inspect the documents to which access has been refused**



In 2010, the GSC received 2 764 initial requests for access to 9 184 documents. Following these requests:

- 7 844 documents were released entirely or partially (86,7% of requested documents),**
- 28 confirmatory requests were received, following which 118 further documents were entirely or partially released to the public,**
- one complaint was lodged before the European Ombudsman; and**
- two legal actions were brought before the General Court against the Council.**



- ❖ **T-105/95 WWF v. Commission:**
 - refusal must indicate why documents have been refused
 - reasons for refusal may not harm the interests to be protected
 - applicant does not need to motivate
 - exceptions have to be strictly interpreted

- ❖ **T-14/98 Hautala:**
 - decision denying access must be based on a genuine examination of the document and the particular circumstances of the case
 - partial access

- ❖ **T-211/00 Kuijer v. Council:**
 - decision to refuse access is valid only if based on one of the exceptions provided for in the Regulation
 - *“the risk of the public interest being undermined must be reasonably foreseeable and not purely hypothetical”*





- ❖ **C-64/05 P Sweden v. Commission:**
 - MS must give reasons compatible with Regulation 1049/2001

- ❖ **C-39/05 P Turco (Turco and Sweden (supported by NL)) v. Council : Request for access to opinions of the Council's legal service**
 - *“Regulation No 1049/2001 imposes, in principle, an obligation to disclose the opinions of the Council's legal service relating to a legislative process”*
 - **But: a refusal on account of the protection of legal advice of a specific legal opinion, given in the context of a legislative process, is possible if that legal opinion is of a particularly sensitive nature or has a particularly wide scope that goes beyond the context of the legislative process in question. In such a case, institution concerned has to give detailed reasons for the refusal.**



- ❖ **C-28/08 P Commission (supported by the Council) v. Bavarian Lager: Protection of privacy and the integrity of the individual**
 - Regulation no. 45/2001 fully applies if request for access to documents involves personal data in the sense of Article 2(a) of Regulation no. 45/2001 ->
 - applicant has to establish necessity of release of data
 - data subject should be asked for consent and comments as to possible legitimate interests

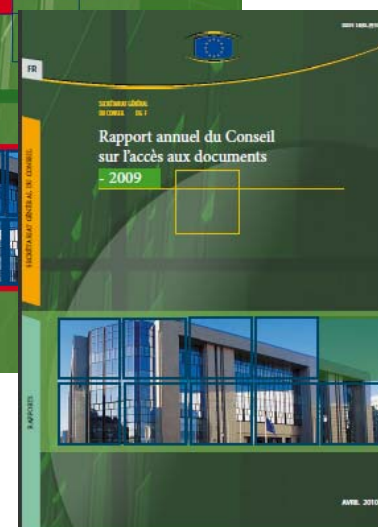
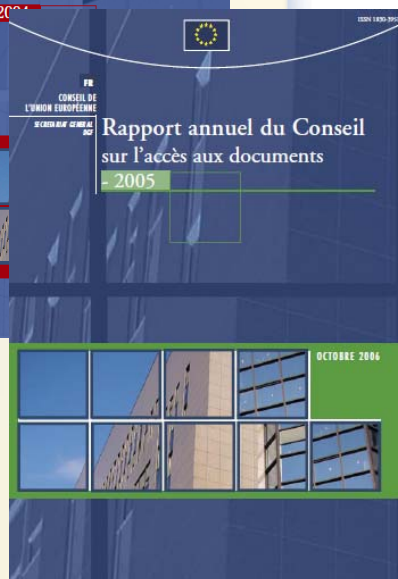
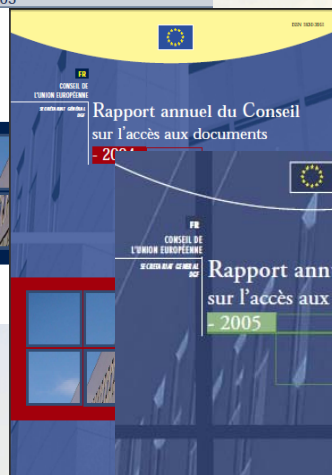
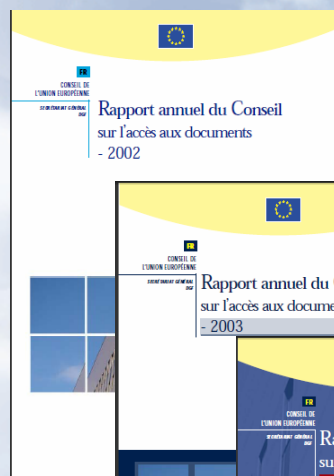
- ❖ **T-233/09 Access Info Europe v. Council: Access to preparatory documents concerning draft legislative acts and containing identified delegations' positions**
 - “release of identified delegations' positions would not seriously undermine the Council's decision-making process”
 - Council to appeal the judgment



Other key players in the debate on transparency and access to documents:

- The European Ombudsman**
- The European Data Protection Supervisor (EDPS)**
- The European Parliament**
- NGOs**

Annual reports of the Council on access to documents





The Council Annual report on access to documents:

- presents the regulatory, administrative and practical adaptations made by the Council to comply with Regulation 1049/2001**
- gives information on the Council public register of documents as well as relevant statistics on public access to documents**
- highlights the key developments in the field of access to documents at the interinstitutional level, and**
- reviews complaints submitted to the European Ombudsman and cases brought before the General Court regarding access to Council documents**