

## How to Find It? EU documentation: perspectives from a research library

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### Abstract:

*The current digital environment has profoundly shaped EU information and documentation publishing and distribution models. Notwithstanding the effort made by EU institutions to improve accessibility by setting up more user friendly databases and public registers of documents, getting to the right EU documents still proves a difficult and sometimes impossible task. The authors of this paper will provide an account of the current difficulties that academic researchers and more advanced users are encountering with regard to access to EU (legal) documentation by providing examples of research queries conducted between 2015 and 2016 for which the European Documentation Centre at the European University Institute was consulted. And in particular, the outcome of online searches and/or online requests made on behalf of researchers on research queries such as: documents relating to the external action of the European Union, European Commission documents relating to International Cooperation and Development policy instruments, European Council rotating presidencies documents etc. Based on their findings, the authors introduce key recommendations to the EU institutions to improve the process of access to EU legal documentation.*

**Keywords:** Access to EU official documents, academic research, EU institutions, electronic legal deposit

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## Introduction

The European University Institute (EUI) is an international academic institution hosting a research community of more than 1000 scholars - doctoral, post-doctoral, fellows and professors - in the social sciences (economics, EU law, history, sociology and political science). The EUI is home to the Historical Archives of the European Union, the Robert Schuman Centre for Advanced Studies and the Max Weber Program for Postdoctoral Studies.

The EUI Library supports its research community with extensive collections and services targeting advanced European-oriented research, including an institutional repository of publications, Cadmus, and soon a data repository. Within the Library, Information Specialists liaise with the academic departments and the research community, and the European Documentation Centre provides interdisciplinary expertise about the institutions, activities and policies of the European Union by way of helping researchers access EU documents and publications, databases, registers, archives, websites, news, and reference sources through training and individual consultation.

The authors of this paper will provide an account, in the form of two case studies, of the current difficulties academic researchers meet with regard to information seeking and retrieval of EU (legal) documentation via publicly available institutional databases, registries and websites. Despite the differences in research topics and document types<sup>1</sup>, the two case studies outline the progress, achievements and findings that have emerged throughout the collaborative research process that took place between 2015 and 2016, from the researchers' first contact with the European Documentation Centre (EUI-EDC) to the fulfilment of their initial requests.

The aim of this paper is to highlight the current challenges academic researchers face with regard to access to EU legal documents, and provide the EU institutions with preliminary recommendations to ensure improved long term access to EU digital documents.

For the purpose of this paper, a document is defined strictly in terms of Regulation 1049/2001<sup>2</sup> as “any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility”. Documents analyzed in these two case studies span a range of years between 1996 and 2016, thus they are not considered historical records<sup>3</sup>. In addition, they do not fall under any of the exceptions and/or restrictions provided by Regulation 1049/2001 (Article 4), whereby they can be obtained through a formal access to documents request via the respective institutional Registers (Article 11).

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<sup>1</sup> European Commission Decisions relating to International Cooperation and Development policy instruments and Work Programmes of the European Council rotating presidencies were used as part of the bibliography and as documentary evidence of their PhD theses

<sup>2</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:114546>

<sup>3</sup> Council Regulation (EC, EURATOM) No 1700/2003

## Discussion

The advancement of access to documents policy within the EU institutions can be traced back to the 1993 Code of Conduct and later to its successor Regulation 1049/2001, which laid down the legal framework for creating a process through which an applicant (natural or legal person residing in Europe) could request public access to documents held by the EU institutions, that is to say, “documents drawn up or received by it and in its possession.” As a result, applicants filing an access to documents request via the institutional Registers<sup>4</sup> are expected to identify beforehand the documents they request rather than the information they seek (cf. Rossi, 2017). If this conceptual partition between document and information serves the purpose of setting the boundaries between the institutional duties versus the judicial competence with respect to the transparency and access rules governing EU institutional documents, it also creates an inherent paradox. The paradox resides in the fact that the burden of precision is imposed onto the applicant to identify the documents (not information) prior to their requests. This is based on the presumption that EU institutions have put in place well developed practices and policies applicable to the whole lifecycle of documents aimed at guaranteeing custodianship, authenticity, reliability, usability and completeness of official institutional records. It also implies a provision of refined dissemination and research tools such as indexes, high quality metadata (with regard to content, context and relationships), intelligent and interoperable information systems architectures and long term preservation and access policies, including specific digital preservation plans.

Yet, a recent study<sup>5</sup> commissioned by the EU Publications Office analyzing 4.5 million documents from 27 document sources belonging to 14 different EU institutions, agencies and bodies has documented a rather fragmented, copious, and chaotic EU digital information landscape. Documents are found in registers, document libraries, databases and in some cases they are spread across websites, each with their own specific architecture, organization and modes of access. Furthermore, it was found that the metadata associated with these documents is often inconsistent, unpredictable and/or insufficient.<sup>6</sup> The study rightly identifies the need for more integration, homogeneity and coordination among the various EU institutional and inter-institutional actors involved in the dissemination of EU documentation, to better respond to the information needs of a community of users, who need to be able to interpret the context, status and meaning of any given document.

The analysis conducted here by the authors draws attention to lesser-known and discussed issues surrounding EU documentation. What emerges from these two case studies is not just the need for more coherence and integration in the dissemination process of EU documents, although this is a critical aspect, but also the need to have a coherent approach to managing, maintaining and preserving EU digitally-born documents — supporting EU decisions, actions and operations alongside the decision making process. The imminent need of a (political) mandate on legal deposit for digital items created by EU institutions, including websites, videos, images, social media, along with a policy over the preservation of official institutional documents, as evidence of their reliability and authenticity, are the two issues at stake that

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<sup>4</sup> Access requests are normally filed online through the institutional registers if a search in the official EU databases will not produce the right document. A standard reply is received to the email address of the applicant, in this case the EUI/EDC on behalf of the researcher, and at this time, a unique number is assigned to the request (a GESTDEM number)

<sup>5</sup> <http://publications.europa.eu/documents/2302054/2303812/Ensuring+integrated+access/b282c2f1-c17c-45bc-bb04-2b16ccb3f166>

<sup>6</sup> Conversely, it is worth mentioning that EUR-Lex features accurate and structured metadata, indexing tools, an integrated information architecture that provide an overall user-friendly experience (and quick access to the right document)

EU institutions must face, in order to contain the consequences of a possible irreversible digital black hole affecting EU government documentation.

These critical issues have a strong impact on researchers as it emerges in the two case studies explored in this article. In particular, the first case study questions the reliability<sup>7</sup> of official EU documents (upon the request of final official documents, an EU institution could only provide draft documents lacking dates, reference numbers, headings and signatures) while the second case study testifies to the systematic disappearance of official websites from the web (websites of rotating European Council Presidencies held by Member States, including published documents which are no longer available).

As government transparency, accountability and consequently access to documents is increasingly expected by the research community as well as from the general public, the authors hope that the results of these case studies will prompt further investigation, analysis and actions from the EU institutions. Whereas if the increasing complexity of EU activities and the rapid changes in information technology are not supported by a political commitment to a coherent policy of trusted custodianship of EU documents, it will become an increasingly burdensome task for the institutions to support the principles of transparency and accountability enunciated by Regulation 1049/2001, and an even greater challenge for the research community to contribute to the historical understanding and critical analysis of the decision making process of the EU as a whole.

## Case Studies

Between the second half of 2015 and the end of 2016, the EUI-EDC assisted both EUI and non-EUI members with multiple queries regarding access to official documents produced by the EU institutions. The case studies selected from that time frame concern: 1. a PhD candidate from the EUI, Department of Law, whose topic of research referred to the case of development cooperation in Somalia in the framework of EU external relations, 2. a PhD candidate in Political Studies at the University of Milan, whose research implied analysing Work programmes of rotating EU Council Presidencies from 1996 to 2016.

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<sup>7</sup> Reliability is provided to a record by its form and procedure of creation. Draft documents are sketches or outlines of records, made for purposes of correction, and provisional in nature (cf Duranti, Luciana. *Reliability and authenticity: the concepts and their implications*)

## CASE STUDY 1

<b>Documents type</b>	Commission decisions adopting financing instruments in the EU budget for the funding of EU external policies. Researcher needs the final version of these documents including annexes (1 to 10 annexes per each Decision)
<b>Documents provenance</b>	Commission DG DEVCO; European External Action Service - Service of Foreign Policy Instruments (FPI)
<b>Total number of documents needed by researcher</b>	117 + corresponding annexes
<b>Documents found on the institutional database of DG DEVCO</b>	54
<b>Documents requested to the EU institutions</b>	63
<b>Total number of email exchanged with all parties involved</b>	196

At the final stage of their PhD thesis, a EUI researcher contacted the EUI-EDC requesting assistance in finding and retrieving legal official documents<sup>8</sup>. Together with the PhD candidate, the EUI-EDC identified and prioritized, in terms of timeline, the documents deemed important for the continuity of their research. This step shaped the research strategy, i.e., what could be available and traceable online, and what needed to be obtained through the official registers of the EU institutions.

From a list of 117, the EUI-EDC retrieved 54 Commission decisions adopting financing instruments in the EU budget for the funding of EU external policies. Navigating the database of DG DEVCO proved to be a complex and, at times, a challenging task because queries by exact title often produced unpredictable search results, with associated metadata being inconsistent and unpredictable (e.g. Commission Decisions inaccurately filed as press releases or other types of documents). Furthermore, Decisions were most of the time separate from their corresponding annexes—arbitrarily published in sets, partially, individually or together—and thus resulting in multiple searches to get a complete set of documents. The remaining documents that were not found in the public domain were requested either through the official register of the EU Institutions or to contact persons in the Commission. Between 20/10/2015 and 30/01/2016, the EUI-EDC placed a total of 63 accesses to documents requests, based on a priority list provided by the PhD researcher. Throughout this period,

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<sup>8</sup> First email from PhD candidate, 16/10/2015 read “*I need the final versions of decisions and all the annexes. In fact, they often reply: [...] this Decision is online but then one finds only the Decision and not the Annexes. Furthermore, for some of the documents I don't even have a reference number or I do but the documents don't appear in the Commission's website. In this case, I know about the existence of these documents because they are mentioned in other documents*”

email exchanges with Commission officials were frequent. In some cases, the EUI-EDC established regular correspondence with officials concerning specific documents and continued to contact them directly for further requests. Often, in the absence of contextual information around these documents, officials provided useful and technical explanations with regard to Strategy Papers, Indicative Programs, Action Plans, Action Programs, etc., as well as the status of their adoption.

Requests submitted through the official registers fall under scrutiny of the legal framework of Regulation 1049/2001 which, among other provisions, stipulates a response within 15 working days. In some cases, the time limit of 15 working days for handling documents was extended and justified -- for example, in one case, to be released to the general public, documents partially created by a third party have to be formally endorsed through a signature. However, in other cases an extension of the time limit of 15 working days was applied but no motivation was provided, and in at least 10 cases the time limit expired and the requests were not fulfilled – an infringement of what is drawn in Regulation 1049/2001 (Article 7).

In just a few cases, the EUI-EDC received partial documents: a Decision, but not all of the annexes, no annex at all; or the wrong documents, which then triggered additional requests and further correspondence to receive the right documents. In six instances<sup>9</sup>, upon the request of final documents with specific reference numbers, the Commission informed that the only registered version in their archival system was as a draft document and not the final as requested. In a later email from the Service of Foreign Policy Instruments, a partial explanation to the issue of draft versions was provided<sup>10</sup>. This prompted the researcher to have a discussion with their PhD thesis supervisor and agree that they would work with drafts since the institutions didn't send the final version.

During the timeframe that the EUI-EDC worked with the PhD researcher, a total of 196 emails were exchanged involving all parties; and 63 requests for access to EU documents were mostly submitted on behalf of the researcher over three months (October through December 2016). Although Regulation 1049/2001 does not refer a limit to the number of requests that an individual, or others on their behalf can submit, exceptionally, the EUI-EDC processed a significant number of requests to the Commission, and was at the end of the process alerted by the corresponding Transparency Unit of DG DEVCO to the impact this had on the workload of those examining the documents and signing off their public release. As the procedure of releasing documents to the public domain is accurate and thorough when confronted with a large number of solicitations the service might not be capable to respond in a timely manner and/or in accordance to the needs of the requestor, even in those cases that refer to advanced academic research purposes. The Transparency Unit of DG DEVCO promptly offered to informally deal with any upcoming requests, asking these to be sent to the functional inbox of the service, and not through the register, in an attempt, to perhaps bridge the administrative process<sup>11</sup>.

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<sup>9</sup> C(2009)1501; (C(2008)6826); C(2010)1993; C(2009)5150; C(2008)1184; C(2007)3701

<sup>10</sup> Email from FPI, 22/12/2016, ref 2015/5779 read *"We refer to your complementary application dated 02/12/2015 in which you asked for the final versions of the provided documents. Please note that we have proceeded to internal consultations in order to ask whether the versions which we sent you were the final ones. Our central services have informed us that, in the past, internal decisions adopted by the Commission were not finalised by the Registry. This is the reason why all the four documents which you have requested are only available in draft format. Furthermore, unfortunately, we cannot "finalise" them after a so long period of time. Therefore, we send you herewith the "day notes" confirming the adoption of the sent texts by the Commission. These accompanying "day notes" are provided to confirm you that the versions we sent you in our previous e-mail are the final ones"*

<sup>11</sup> Regulation 1049/2001 article 6(3)

In the following months through the beginnings of 2016, all requests were processed via the official Register.

## CASE STUDY 2

<b>Documents type</b>	European Council Presidencies Work Programmes, 1996-2016
<b>Documents provenance</b>	Council of the European Union/European Council
<b>Total number of documents needed by researcher</b>	60
<b>Documents found on the web</b>	36
<b>Documents requested to the EU institutions</b>	24 (Work Programmes from 1996 to 2007 <sup>12</sup> )
<b>Total number of email exchanged with all parties involved</b>	49

At the beginning of the academic year 2016, a PhD candidate of the University of Milan contacted the EUI-EDC at the initial phase of their doctoral studies requesting guidance on how to find the Work Programs and/or priorities of the rotating Presidencies of the European Council on the official websites set up by the Member States during their Presidency because she found that most of them had been taken down<sup>13</sup>. Since this collection of documents cannot be retrieved from one single database, or website, let alone one single creator/custodian that would collect, validate, and preserve the final documents, the EUI-EDC provided the researcher with some online sources where those documents could possibly be found, including the Internet Archive where the researcher was able to find the official documents from 2008 onwards.

Following this, the EUI-EDC proceeded to apply several research strategies to obtain the remainder documents; from conducting multiple search queries in the Council, Commission and EP websites, as well as those of the Member States in charge of the Presidency of the EU during the designated timeframe; to reaching out to the EDC network; and liaising with contact persons dealing with Records Management and Access to Documents at the EU institutions.

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<sup>12</sup> The initial request suggested a need for access and consultation of documents produced between 1996 and 2016. With the assistance of the EDC following the first contact, the researcher was able to reduce the number of documents to those referring to the Presidencies held between 1996 and 2007, with the exception of Germany (2007)

<sup>13</sup> Extract from email from PhD candidate, 16/09/2016: “Since most of presidency websites are already shut down, I cannot access the programmes (e.g. the Swedish one from 2009, the Portuguese from 2007, and especially previous ones). [...]Therefore, I would like to ask whether you have presidency programmes at the EUI library. If not, could you maybe recommend me the best way to find them? [...] Maybe there is an archive that stores all the presidency programmes (at least since 1995-1996)?”

On the 22/09/2016 a request was sent to the *Archives Centrales*<sup>14</sup> of the Council of the EU. The Secretariat General of the Council replied stating that the programmes are political statements, and therefore published by the Member State holding the Presidency; meaning each Member State is to have custody of the final documents. The SG was, however, able to retrieve copies of some individual Presidency work programs, in spite of the Council not being the creator of those documents<sup>15</sup>. Thereupon, the EUI-EDC used the official register of the EC to request access to SI documents<sup>16</sup> possibly containing Work Programs of the European Council Presidency<sup>17</sup>, which generated an automatic reply advising that, in accordance with Regulation 1049/2001, a response would be provided within 15 working days. However, the Commission neither replied within the expected timeframe nor notified the EUI-EDC on the need to extend the time-limit to grant or refuse access to the documents (Article 7(3)). Consequently, the EUI-EDC emailed the Secretariat General of the Commission to obtain an update on the request submitted and expressed the difficulties encountered in the process of retrieving official documents using the recommended channels. This feedback was promptly forwarded, and on 10/11/2016, the Director of the Unit dealing with Relations with other Institutions at the Secretary General of the Commission replied to the EUI-EDC request, informing that the EC did not hold the requested SI documents. Throughout this time, the EUI-EDC kept a regular contact with the PhD candidate advising on the status of the requests, and the steps taken to retrieve those. On the same day the Commission responded stating the unavailability of the SI documents. The EUI-EDC liaised with partner institutions in Germany, making it possible to retrieve a working document regarding the German Presidency 1999. This document, however, was not the original document; that is to say that it was not possible to guarantee that it contained the official text.

Taking advantage of the collaboration shown by the Unit dealing with Relations with other Institutions, the EUI-EDC contacted the Commission; who processed a request regarding public access to documents<sup>18</sup>. Seven days after having submitted the formal request, the Director of that Unit contacted the EUI-EDC to provide further information on the status of the request. The Unit was facing difficulties in retrieving the documents in question, as the system was not returning any results; at the same time, the service was in contact with the Member States involved<sup>19</sup>. On the 05/12/2016, the EUI-EDC, and consequently the PhD candidate, received the requested documents, with the exception of one work program (Presidency of Council held by Ireland 1996). At this stage, the project was finalised since the researcher advised that they would contact the national authorities of Ireland and Germany.

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<sup>14</sup> Functional email where all document requests should be submitted: [archives.centrales@consilium.europa.eu](mailto:archives.centrales@consilium.europa.eu)

<sup>15</sup> Principle of provenance - a fundamental principle of archive that designates the creator of a document and dictates origin and contextual origin

<sup>16</sup> SI documents are unpublished documents produced by the European Commission's Secretariat-General on the work of the Council, for instance in connection with intergovernmental conferences, European Council, COREPER meetings etc)

<sup>17</sup> Request logged under ref GestDem 2016/5642, dated 11/10/2016

<sup>18</sup> Request ref GestDem 2016/6420

<sup>19</sup> Extract from email from SegGen, 23/11/2016 read: *Buongiorno le ricerche prendono un po' più di tempo visto che effettivamente la ricerca tramite il sistema di registrazione non da risultati ; abbiamo anche consultato il consiglio che conferma non avere la documentazione. I miei servizi si sono dunque rivolti alle varie RP e dovremmo avere qualcosa (forse non tutto) entro inizio dicembre ... siamo andati ovviamente un po' oltre l'ambito della richiesta da lei espressa alla Commissione*

## Conclusion

“Freedom of information, underlining the accountability of administrative bodies and the citizens’ right to control their activity, favours a better organization and determines the spreading of knowledge of our social system, knowledge which is losing its elitist character.” (cf. Duranti, 1995)

In the concluding remarks, the authors would like to emphasise that procedures, laws, rules and technology that govern the mechanisms of access to documents are made to serve the people who use them. This human dimension is not to be underestimated – researchers along with EU officials and more traditional professionals such as librarians, documentalists and archivists have passion, competence and commitment to the broader cause of accessibility, transparency and freedom of information. A tighter liaison with advanced research centres that deal with EU related matters and that respond to more specialized research needs would undoubtedly be beneficial to the broader public as well as to the EU institutions. Research questions made by researchers could then anticipate and therefore orientate, remedy or correct policies and procedures with regard to information that fail to provide responses to those needs.

To attain this, the authors give some preliminary recommendations:

1. Enforce a systematic and comprehensive custodianship policy throughout the entire lifecycle of the documents, from their preparatory phase to their final manifestations ;
2. Implement a strong overall digital legal deposit and preservation policy to ensure long term access to EU digital documents in any medium and form ;
3. Provide end users with contextual as well as provenance information and relations to other documents (archival approach to documentation) ;
4. Be accountable on keeping applicants informed throughout the whole access to documents request process (Regulation 1049/2001).

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