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# Public Access to Documents 2015

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Bureau Contribution to the  
European Parliament's  
Annual Report

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**Transparency Unit**

European Parliamentary Research Service  
European Parliament  
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## FOREWORD

Since 3 December 2001, the Parliament, the Council and the Commission have been applying Regulation (EC) No 1049/2001 on public access to documents in their possession.

In accordance with Article 17(1) of this Regulation: "*Each institution shall publish annually a report for the preceding year including the number of cases in which the institution refused to grant access to documents, the reasons for such refusals and the number of sensitive documents not recorded in the register*".

According to Rule 116(7) of Parliament's Rules of Procedure, the Parliament's committee responsible for legislation on transparency, that is to say the Committee on Civil Liberties, Justice and Home Affairs (LIBE), shall prepare the annual report referred to in Article 17(1) of Regulation (EC) No 1049/2001, on the basis of information provided by the Bureau and drawn from other sources. The LIBE annual report shall then be submitted to the plenary.

This document constitutes a proposal for the Bureau's contribution to the European Parliament's 2015 annual report referred to in Article 17(1) of Regulation (EC) No 1049/2001.

## ON METHODOLOGY

The proposal for the Bureau's contribution to the European Parliament's 2015 annual report comes for the second time with a modified layout and an adapted methodology. In particular, according to the updated methodology used:

- Figures on consulted and requested documents refer to specified documents only;
- Applications for very large or indefinite numbers of documents, which the institution was unable to identify are not reflected in the statistics on consulted and requested documents;
- Figures on applications for access to documents take account of applications for both specified and indefinite number of documents;
- Partial access is counted as a positive response;
- Confirmatory applications relate to total refusals and partial access;
- Confirmatory applications are counted for the year of the corresponding initial applications.

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# Proposal for the Bureau contribution to the European Parliament's Annual Report on Public Access to Documents - 2015 (Article 17 of Regulation (EC) No 1049/2001)

## ***Executive Summary***

### *Figures*

- The number of document references in the public register continued to grow. By 31 December 2015, the register's database contained 606 256 document references.
- In 2015, 82 612 documents were consulted directly on Parliament's public register website, with more than one million documents accessed via other platforms. During the same period, Parliament received, via the online application form or by e-mail, 444 applications involving 747 specified documents, with an increase of more than 40% compared to 2014.
- Out of the 444 applications, 107 requests involved documents not previously disclosed to the public.
- The overall positive response rate in 2015 was close to 90%.
- Parliament denied access in 44 cases, mainly in connection with applications for documents related to Members.
- Academics and researchers continued to represent the largest share of applicants: 32% of applicants declared they belonged to this category. However, journalists represent the most common applicants for not previously disclosed documents.

### *Trends*

- In 2015 the amount of applications for a very large or indefinite number of documents (applications made for "*all documents related to*" a particular subject, "*all documents containing information on*" a particular theme, or for documents covering a whole period of time etc.) rose dramatically and tripled compared to 2014.
- In 2015 Parliament faced a journalist campaign seeking access to all supporting documents linked to Members' expenditure and allowances claims.
- Public interest in documents concerning early agreement negotiations in the context of the legislative procedure increased, and in particular with regard to multi-column tables submitted to inter-institutional tripartite meetings.
- Three new applications initiating proceedings before the Court of Justice were lodged, seeking annulment of Parliament's decisions on access to documents.

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## CHAPTER I

### *Implementation of Regulation (EC) No 1049/2001 in 2015*

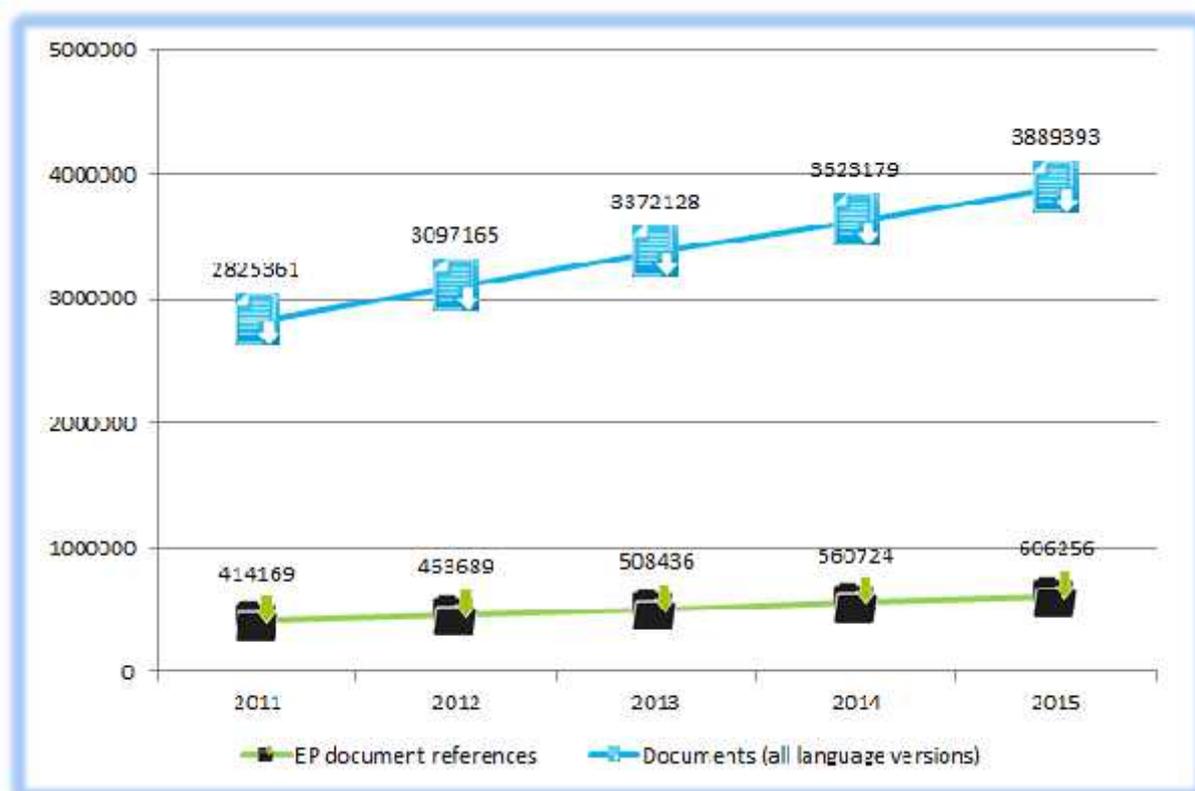
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#### **A) Content of the public register of Parliament's documents**

The public register of Parliament's documents contains references to official Parliament documents since 2001.

The number of document references has grown every year, with an 8% increase in 2015 compared to 2014. By 31 December 2015, the register's database contained 606 256 document references (representing 3 889 393 documents, taking all language versions into account). No sensitive document, within the meaning of Article 9 of Regulation (EC) No 1049/2001, was recorded in the public register of Parliament's documents.

(Fig. 1) **Evolution of the public register of Parliament's documents**



## **B) Figures on consulted and requested documents<sup>1</sup>**

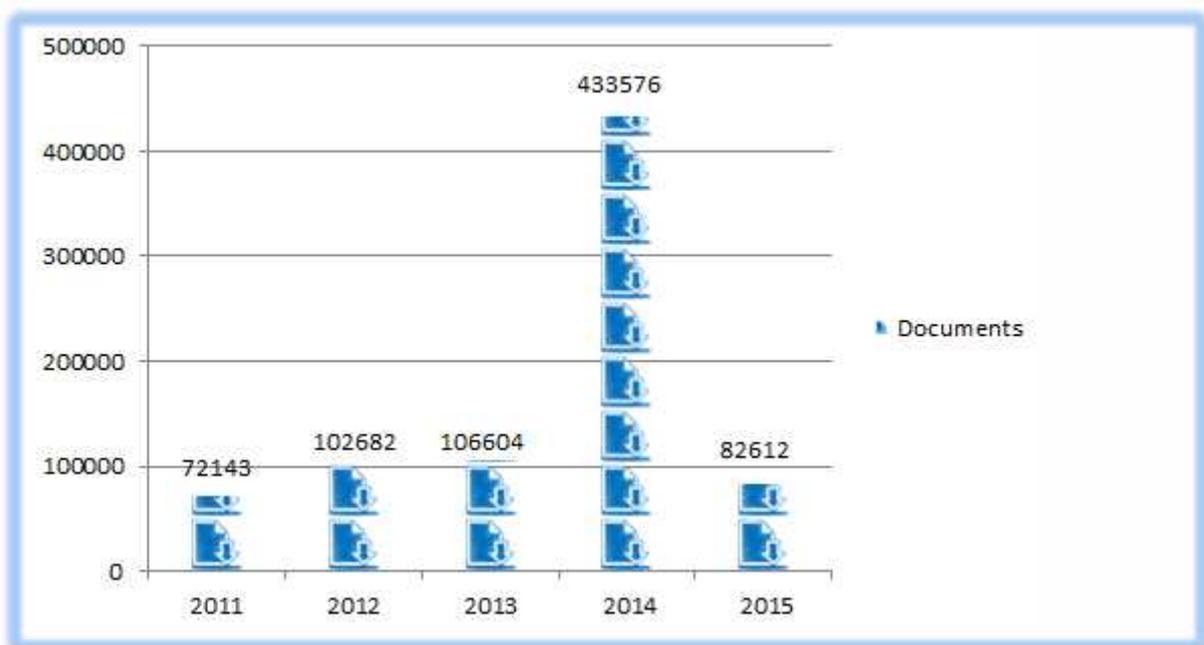
In accordance with Article 12 of Regulation (EC) No 1049/2001, circa 95% of Parliament documents can be consulted directly on Parliament's public register website<sup>2</sup>. Documents that are not directly consultable can be made available upon request via the online application form<sup>3</sup> or by e-mail.

### **B.1) Documents directly consulted**

In 2015, 82 612 documents were consulted directly on Parliament's public register website. This figure however does not take into account the number of documents consulted via other platforms linked to the register's database, including the parliamentary committees and Parliament's Think Tank webpages (with a total number of downloaded documents of over one million).

The types of documents most frequently consulted on Parliament's public register website were (in descending order): answers to questions (40.72%), questions for written answer (25.71%), adopted texts (4.41%), motions for resolutions (2.06%).

*(Fig. 2) Number of documents consulted on the public register of documents website*



<sup>1</sup> These figures refer to specified documents only

<sup>2</sup> <http://www.europarl.europa.eu/RegistreWeb/search/simpleSearchHome.htm?language=EN>

<sup>3</sup> <https://www.secure.europarl.europa.eu/RegistreWeb/requestdoc/secured/form.htm?language=EN>

## **B.2) Documents requested via the online application form or by e-mail**

In 2015, 747 specified documents were requested to Parliament via the online application form or by e-mail, representing an increase of more than 40% compared to the amount of specified documents requested the year before.

This increase however does not take account of the indefinite number of documents, requested by applications made i.a. for either "all documents related to" a particular subject, "all documents containing information on" a particular theme, or for documents covering a whole period of time etc. These documents cannot be quantified for statistical purposes.

*(Fig. 3) Number of specified documents requested via the online application form or by e-mail*



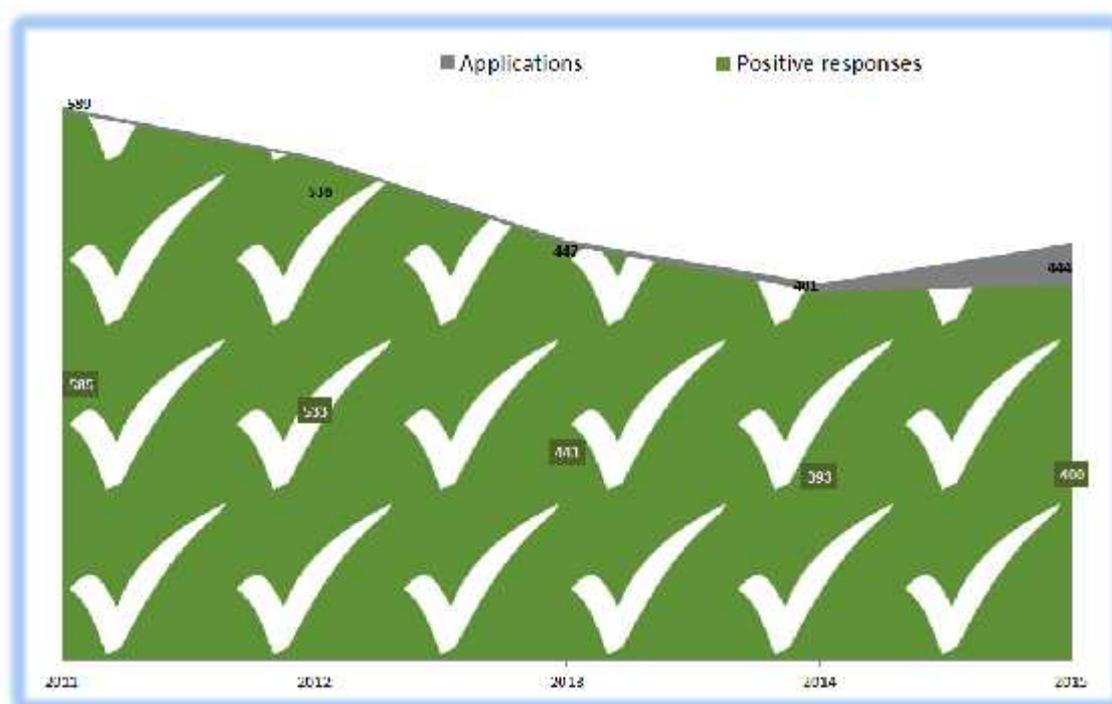
### C) Figures on applications

In 2015, Parliament received 444 applications via the online application form or by e-mail. In particular, Parliament handled 322 applications for specified documents, 112 applications requesting access to an indefinite number of documents and 10 inter-institutional consultations under the "Memorandum of understanding"<sup>4</sup>.

It is worth underlining that the amount of applications for indefinite number of documents has more than tripled compared to 2014. Almost 25% of all applications received in 2015 requested access to either "all documents related to" a particular subject or "all documents containing information on" a particular theme.

Out of the 444 applications received in 2015, Parliament responded positively in 400 instances, in four cases granting partial access to the requested documents.

(Fig. 4) **Number of applications and positive replies**



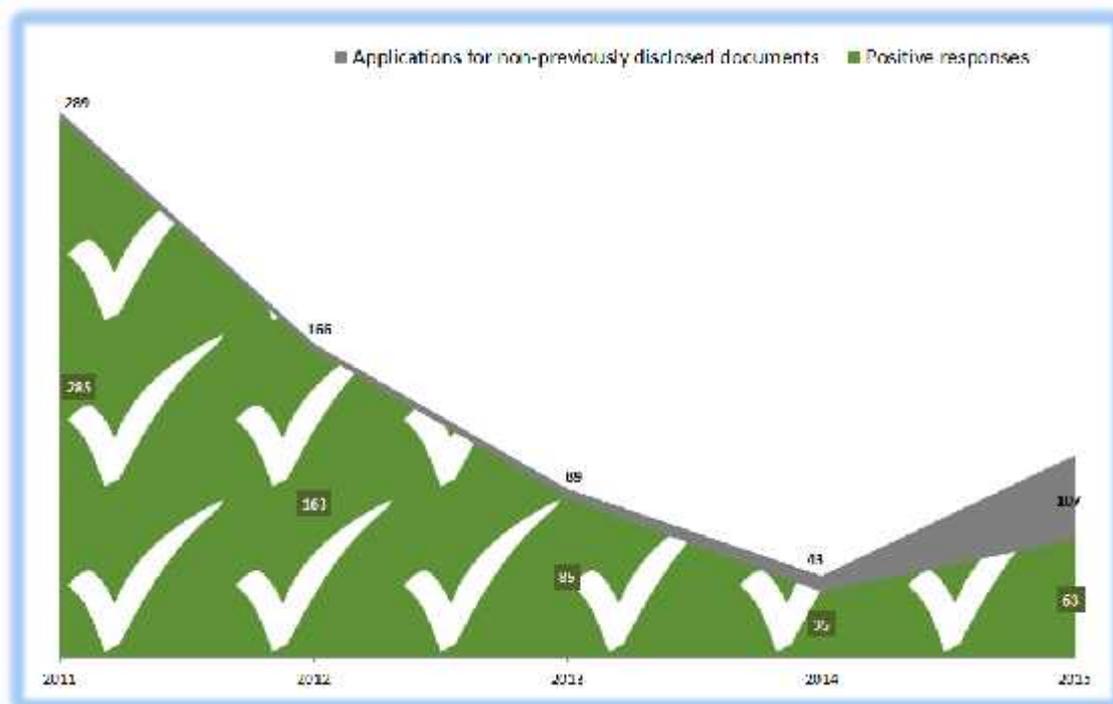
Furthermore, out of the 444 applications received in 2015, 107 requests involved documents not previously disclosed to the public.

In particular, applications for not previously disclosed documents concerned mainly documents related to Members (46, 7%), political bodies (17%), financing of political parties at European level (10%), trilogue documents (8,5%), legal opinions (8%) and public procurement (3%).

In 2015, Parliament responded positively to 63 out of 107 applications for documents not previously disclosed.

<sup>4</sup> Memorandum of Understanding, signed on 9 July 2002, between the services of the European Parliament, the Council and the Commission on the application of Article 4(4) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents

(Fig. 5) **Number of applications for not previously disclosed documents and positive replies**

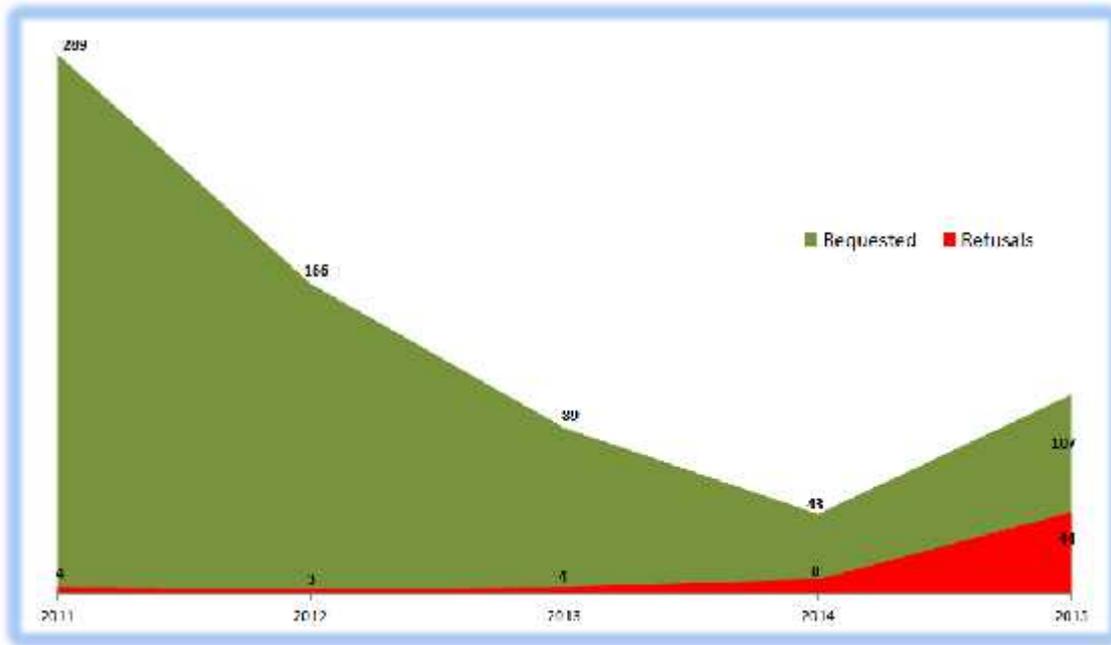


In 2015, Parliament denied public access to documents in 44 cases by means of a decision by the competent authority, in two instances granting at the same time partial access to some of the requested documents.

40 of the 44 refusals concerned documents related to Members; two refusals were related to the financing of political parties and the other two concerned respectively pending negotiations on the "Telecommunication Single Market Regulation" (TSM) and the security of Parliament's premises.

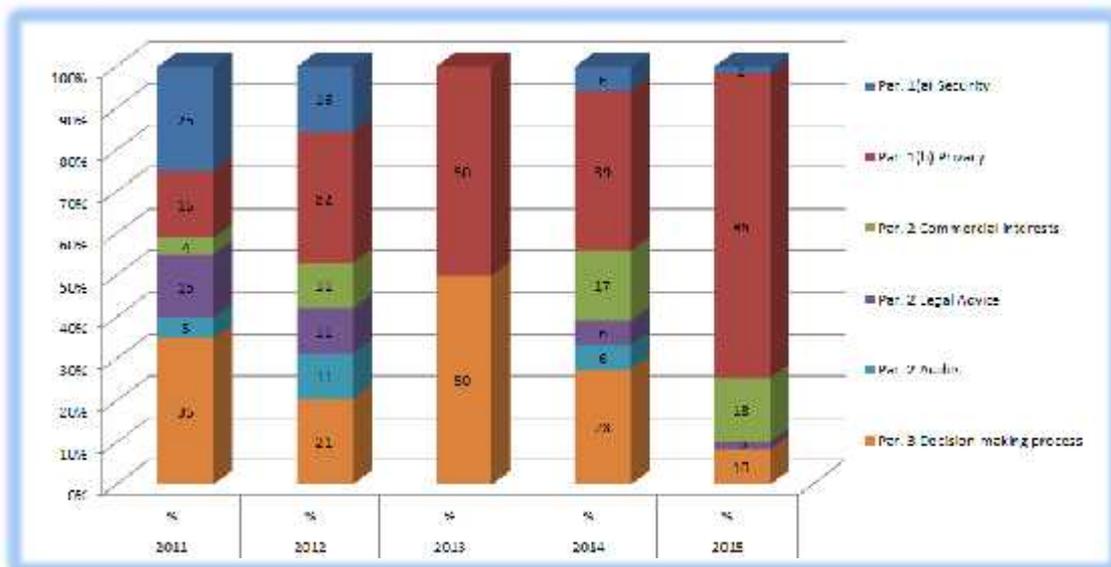
It is noteworthy that the increase in refusals, compared to the previous year, is a direct result of 31 refusals made in a coordinated action brought forward by 31 journalists seeking access to all supporting documents related to Members' expenditure and allowances claims (see chapter II, section A).

**(Fig. 6) Number of applications for not previously disclosed documents and refusals**



As in 2014, Parliament's refusals were essentially based on the need to protect privacy and the integrity of the individuals (point (b) of Article 4(1) of Regulation (EC) No 1049/2001), commercial interests of a natural or legal person (Article 4(2) of Regulation (EC) No 1049/2001) and the decision-making process of the Institution (Article 4(3) of Regulation (EC) No 1049/2001).

**(Fig. 7) Rate of use of exceptions under Article 4 of Regulation (EC) No 1049/2001**



In conclusion, Parliament's positive response rate in 2015 remains high, with an overall positive response rate of circa 90%, and a positive response rate for applications involving not previously disclosed documents of 60%.

## D) Applicants' profiles<sup>5</sup>

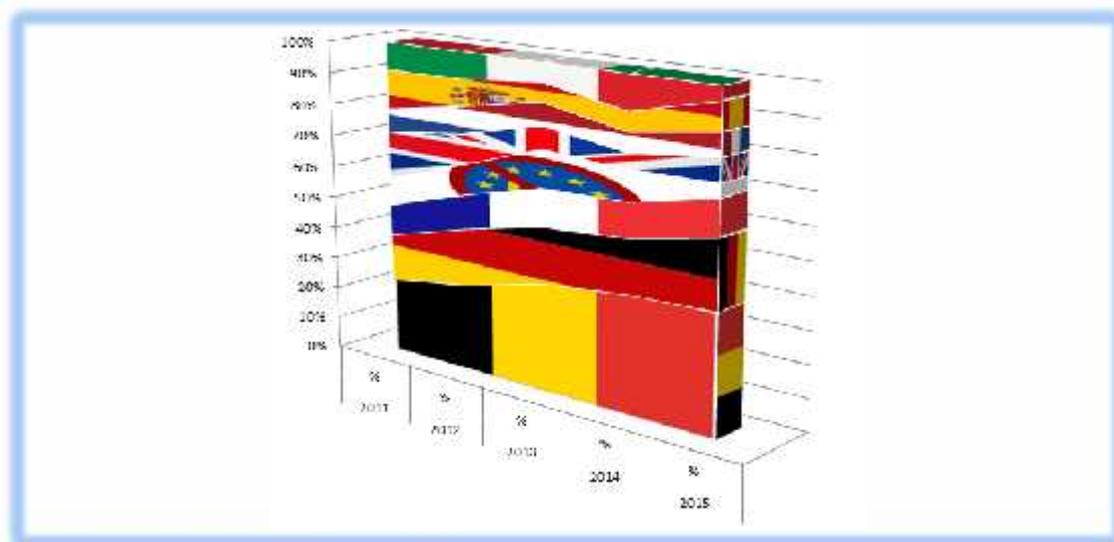
Academics and researchers continued to represent the largest share of applicants with over 32% of applicants pertaining to this category, followed by business sector, environmental organisations and other interest representatives, accounting together for circa 25% of applications. In 2015, a significant number of requests came from journalists (12.5%), who represent the largest share of applicants for not previously disclosed documents, whereas the proportion of requests from lawyers remained more or less stable at around 9%.

As regards the geographical spread of applications among the EU Member States, the pattern for 2015 was similar to that seen in previous years. In line with the previous year, about 30% of applicants were Belgium-based, followed (in order of size) by Germany (circa 14%), France (9%), Spain (6.5%), the Netherlands and the United Kingdom (in both cases close to 6%). Applications from third countries continued to drop and accounted for approximately 3.1% of the total.

In 2015, English remained the language most frequently used for applications (56.5%), followed by French (13%), which has overtaken German (which dropped slightly to 11%), and Spanish (almost 7%) following similar patterns as in previous years.

(Fig. 8) **Profiles of applicants for access to documents in 2015<sup>6</sup>**

(Fig. 8a) **Nationality**



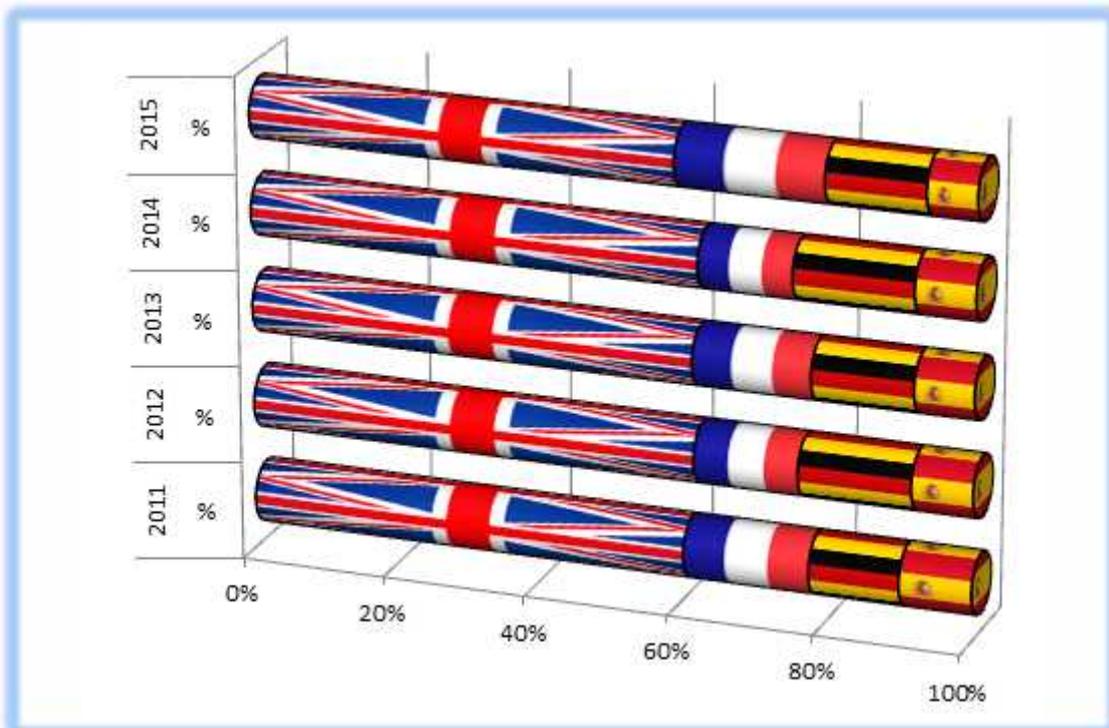
<sup>5</sup> Data on applicants' profile are gathered on the basis of the information provided by applicants in their applications. However, as Regulation (EC) No 1049/2001 does not require applicants to provide information about their identity, a certain number of applicants indeed choose not to reveal their occupation

<sup>6</sup> © of images in the graphs: salem / Fotolia - kebox / Fotolia - Pekchar / Fotolia - DIDEM HIZAR / Fotolia - Claudio Divizia / Fotolia - ravnka / Fotolia - photolars / Fotolia - Becky Stares / Fotolia - Sylvie Bouchard / Fotolia - atScene / Fotolia - Seraphim Vector / Fotolia - valentint / Fotolia - quka / Fotolia - Gstudio Group / Fotolia - mostafa fawzy / Fotolia - BERLINSTOCK / Fotolia - Double-J Design - European Union

(Fig. 8b) **Profession**



(Fig. 8c) **Language**



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## CHAPTER II

### *Trends and specific issues*

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Two types of request received by Parliament marked the year 2015: A coordinated action brought forward by 31 journalists seeking access to all supporting documents related to Members' expenditure and allowances claims, and the mounting pressure for access to documents relating to early agreement negotiations in the context of the legislative procedure, in particular to multi-column tables submitted to inter-institutional tripartite meetings (so-called trilogues).

Moreover, the year 2015 saw a tremendous increase in the amount of applications seeking access to a large or indefinite number of documents.

#### ***A) Coordinated journalists' action for documents related to Members' expenditure and allowances claims***

The upward trend for documents related to Members continued in 2015.

Approximately 11% of all applications were seeking access to documents related to Members, with particular focus on their expenditure and allowances claims, and their interactions with interest representatives.

In dealing with such applications, Parliament applies two main principles:

- a) Rule 116(2) of Parliament's Rules of Procedure, under which documents drawn up by individual Members or political groups are Parliament documents for the purposes of access to documents only if they are tabled under the Rules of Procedure. This means that Members' personal documents, including their e-mail exchanges, letters drawn up or received by them or internal notes are not considered as "Parliament documents" and, therefore, fall outside the scope of Regulation (EC) No 1049/2001;
- b) the guidelines decided by the Bureau on 20 February 2008 on the basis of the best practices observed in national parliaments, according to which detailed breakdowns of the amounts actually paid out to individual Members are not made public, although Members are free to disclose additional information.

In particular, in 2015 Parliament faced a specific coordinated action for disclosure of all supporting documents related to Members' expenditure and allowances claims.

31 journalists of all EU nationalities introduced similar requests for access to all documents held by Parliament in connexion with the reimbursement of expenses paid to the Members of their nationality, covering a time-frame going from one year up to more than four years. In the case of three Member States, more than one application was received, with different applicants requesting documents for different years.

The applicants were seeking access to all supporting documents related to Members' use of the travel and subsistence expenses, the general expenditure allowance and the parliamentary assistance allowance<sup>7</sup>, alleging that the disclosure of such documents

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<sup>7</sup> The wording supporting documents is meant to cover train tickets, electronic ticket-itinerary receipts, flight boarding cards, travel declarations, original invoices for accommodation expenses, recruitment documentation for accredited parliamentary assistants, contracts between Members and their national paying agents and local assistants, pay slips,

was necessary to 1) ensure public control over the spending of public funds, allowing possible financial irregularities to come to light, and 2) contribute to the public debate on how Parliament functions and how certain expenditures are generated and maintained.

The number of potential documents covered by the applications was estimated by Parliament at over 200 000 documents per year.

In its replies to the applicants, Parliament took into consideration the most recent case law on the matter<sup>8</sup> and the obligation for the institution to strike the appropriate balance between public interest in disclosure and the rights of the individuals concerned to the protection of their privacy and integrity. In particular, Parliament based its refusals on the following considerations:

- a) the non-existence of Parliament documents in terms of supporting documents on the use of general expenditure allowance and of copies of Members' bank records;
- b) the need to protect the privacy and integrity of individuals, in accordance with point (b) of Article 4(1) of Regulation (EC) No 1049/2001, as the applicants did not demonstrate the necessity of having the personal data transferred to them;
- c) the excessive administrative burden linked to possible disclosure of the requested documents, which was disproportionate as compared to the objective of the applications and contrary to the principle of good administration.

Parliament's decision to refuse access to the requested documents has been challenged by the applicants before the Court of Justice and proceedings are currently pending.

## ***B) Transparency and trilogue documents***

A second trend in 2015 that deserves to be mentioned is the increasing interest in documents relating to early agreement negotiations in the context of the legislative procedure, and in particular to multi-column documents submitted to trilogues. In parallel, the Ombudsman launched an own-initiative inquiry into this topic during the year.

A multi-column document is a shared document in that it usually contains the position of the three institutions involved in the negotiations, plus a fourth column for possible compromise solutions. However, the order and number of columns may vary according to political necessity and the nature of the negotiations.

Multi-column documents have emerged as main working tool of the institutions when they discuss legislative proposals with a view of reaching an agreement. They are intended to help reconcile the positions of the three institutions in order to clear the way for the adoption of the act concerned at an early stage of the procedure. From this perspective, multi-column documents have been developed as a pragmatic way of ensuring that the negotiations progress in an orderly fashion, that all parties involved receive up-to-date information and that the internal transparency of the negotiation process is guaranteed. They have become an indispensable tool to guarantee efficiency in the negotiation process and to help build and ensure trust in the process from all sides.

In 2015 Parliament dealt notably with an application seeking public access to all multi-column documents pertaining to all pending legislative procedures. Around 40 legislative

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traineeship agreements, contracts with service providers and invoices for services provided as well as copies of Members' bank records

<sup>8</sup> Case T-115/13 *Dennekamp v Parliament*, ECLI:EU:T:2015:497

procedures fell within the scope of the application, involving about 119 multi-column documents. Although Parliament had already received a number of applications for public access to trilogue documents in the past, this was the first time that Parliament was confronted with such a comprehensive request, with potential far-reaching consequences on inter-institutional negotiations as well as on Parliament's internal working methods and transparency policy in general.

An initial refusal was made on the grounds that, due to the very large number of documents involved, the processing of the application would have created an excessive administrative burden for Parliament, contrary to the principles of proportionality and good administration. The applicant then submitted a confirmatory application, narrowing the scope of the request down to multi-column tables related to legislative procedures based on Article 16 of the Treaty on the functioning of the European Union (TFEU), or falling within the scope of Title V of TFEU, "Area of Freedom, Security and Justice".

Five legislative procedures, involving eight multi-column documents, were identified as relevant to the confirmatory application. In order to strike the appropriate balance between public interest in disclosure and the protection of the institution's decision making process, Parliament assessed each individual document concerned by the confirmatory application.

For each specific legislative file, Parliament took into consideration various possible effects of disclosure, including the need to preserve trust among the participants of the negotiations, avoiding that cooperation between the institutions be negatively affected, and the importance of the principle "nothing is agreed until everything is agreed". Therefore, while ensuring disclosure whenever possible, Parliament came to the conclusion that the protection of a minimum of confidentiality of the negotiating positions, as reflected in the multi-column documents, with a view to ensuring the well-functioning of the ongoing decision-making process of the institution may outweigh general transparency interests even in the legislative context.

Against this background, full access was granted to six of the requested documents, while only partial access could be granted to those two documents for which negotiations in particularly sensitive areas had not yet been concluded, as their full disclosure at that stage of the legislative procedure would have seriously undermined the institution's decision-making process, in the meaning of the first paragraph of Article 4(3) of Regulation (EC) No 1049/2001.

### **C) Applications for indefinite number of documents**

As already mentioned in the 2014 report, a growing trend has been observed in recent years of applications requesting access to a large or indefinite number of documents, such as applications made for "*all documents related to*" a particular subject, "*all documents containing information on*" a particular theme or for all documents covering a whole period of time. In 2015 the amount of applications for an indefinite number of documents rose dramatically and tripled compared to 2014, representing 25% of all requests for documents during the year.

These requests are often channelled via public portals, such as the website "Ask the EU", which provides an automatic system of generating *ad hoc* e-mail addresses for submitting

requests for access to documents to the EU institutions, without requiring users to provide any information about their existence or identity<sup>9</sup>.

Unlike some national laws, Regulation (EC) No 1049/2001 does not contain any provision on unfair, abusive or clearly unreasonable applications. It does not require applicants to provide information on their identity nor to give any reasons for their requests.

However, in some circumstances the absence of explanation, which could help Parliament identify the requested documents, or the lack of any identity for the applicant, may become an issue for the proper handling of requests.

For instance, applications for "*all documents*" may result in an excessive administrative burden, incompatible with the principle of good administration, as their handling often requires in-depth research to identify all potentially relevant documents and the cooperation of several parliamentary departments beyond their normal business.

Equally, the lack of information about the identity of the applicant is a source of concern when it hampers Parliament from countering abusive recourse to access to documents and avoiding fictitious or repetitive requests from shell e-mail addresses.

For these reasons, and with the aim of safeguarding the interest of good administration, in 2015 Parliament consolidated its practice of asking applicants to provide a postal address to duly notify them of a refusal to access documents by registered letter with acknowledgment of receipt, thus ensuring legal certainty.

Along the same lines, in 2015 Parliament started referring more systematically to Article 6 of Regulation (EC) No 1049/2001, asking applicants to clarify, where requests were not sufficiently precise.

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<sup>9</sup> [http://www.asktheeu.org/en/body/european\\_parliament](http://www.asktheeu.org/en/body/european_parliament)

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## CHAPTER III

### **European Ombudsman decisions and Case law**

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#### **1. Ombudsman's decision to close complaint 1257/2014/KM**

In 2014, a complaint was lodged against Parliament (1257/2014/KM) concerning procedural aspects of a request for access to a number of documents related to parliamentary petitions. Following thorough examination of Parliament's reply and the complainant's observations, in May 2015 the European Ombudsman decided to close the case without finding any maladministration.

#### **2. Judicial Review**

##### **A) Court Judgements**

By its judgement of 15 July 2015 in Case T-115/13 (*Dennekamp v Parliament*), the General Court partly annulled Parliament's decision of 11 December 2012 by which it refused access to the list of names of Members of the European Parliament affiliated to the additional voluntary pension scheme (VPS), on the grounds of the protection of the privacy and integrity of individuals, in accordance with point (b) of Article 4(1) of Regulation (EC) No 1049/2001.

As a result of the court proceedings, the General Court annulled the contested decision only insofar as it refused access to the "*names of Members participating in the additional pension scheme of the European Parliament who, as members of the Parliament's plenary, actually took part in the vote on that additional pension scheme held on 24 April 2007, 22 April 2008 and 10 May 2012*".

In order to implement the judgement, Parliament has provided public access to three documents containing results of the roll call votes (amendments and final decision) held on the additional pension scheme in the context of Parliament's discharge for the financial year 2005 (voted on 24 April 2007), 2006 (voted on 22 April 2008) and 2010 (voted on 10 May 2012).

##### **B) New Cases**

Three new actions were brought before the Court of Justice against Parliament in 2015:

1) *Case T-540/15 - Evropäiki Dynamiki v Parliament (public procurement procedures)*: The action was brought to the General Court in March 2015 by a contractor of the IT framework contract ITS08 (External Service Provision for IT Services), following Parliament's decision of 13 February 2015 by which it refused public access to all requests for quotations, including their technical annexes, issued by the European Parliament for all lots of the framework contract.

Parliament's refusal was based on the need to protect public security, the privacy and integrity of individuals, commercial interests of third parties and the decision-making process. Moreover, Parliament pointed out the excessive administrative burden implied by the application covering about 1 500 documents to be sorted from a pool

of 10 000 documents, for a total of 18000 pages to be assessed in view of a possible release;

2) Case T-540/15 - De Capitani v Parliament (trilogue documents): The action was brought to the General Court in September 2015, following Parliament's decision of 8 July 2015 to provide only partial public access to two multi-column documents relating to pending inter-institutional negotiations on the legislative proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol);

3) Cases T-639/15 to T-666/15 Journalists v Parliament (MEPs allowance and expenditure): 29 actions were brought to the General Court in November 2015, following Parliament's decisions to refuse public access to all supporting documents concerning Members' expenditure and allowances on the grounds of protection of the privacy and integrity of individuals.

## ***Final Remarks***

Parliament's proactive undertakings help to enhance the quantity and quality of information, disseminated to the general public through its internet presence. These steps are the cornerstone of Parliament's transparency policy.

The figures reported in Chapter I show that the public register of Parliament's documents has become an important tool enabling citizens to follow Parliament more closely and actively, enhancing its democratic system. The number of documents made directly accessible is constantly growing and transparency as regards Parliament's role as a decision-maker has been constantly promoted and developed.

The overall number of applications for access to documents has increased in 2015. At the same time so did the complexity of applications. The sharp rise in applications for access to a large or indefinite number of documents has confronted Parliament with a new challenge to strike the appropriate balance between two public interests, both worthy of protection: the transparency of the decision making process and the principle of efficiency and good administration.