



Public Access to Documents 2017

European Parliament's
Annual Report

FOREWORD

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

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(6) of Parliament's Rules of Procedure, Parliament's Bureau shall adopt the annual report referred to in Article 17(1) of Regulation (EC) No 1049/2001.

ON METHODOLOGY

Parliament's 2017 annual report is prepared along the following methodology:

- 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 numbers on requested documents;
- Figures on applications for access to documents take account of two types of applications, for specified documents and for indefinite number of documents;
- Partial access decisions are counted as a positive responses;
- Confirmatory applications may relate either to initial decisions refusing access or to initial decisions granting partial access;
- It is the day of registration of the initial application that determines the year of the corresponding confirmatory application.

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European Parliament's Annual Report on Public Access to Documents - 2017 (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 2017, the register's database contained 683 846 references, compared with 647 903 by the end of last year.
- In 2017, the users of Parliament's public register website consulted 95 014 documents directly through the register. During the same period, Parliament received, via the online application form or by e-mail, 452 applications involving 725 specified documents, a decrease of 10% compared to 2016.
- Out of the 452 applications, 84 involved documents not previously disclosed to the public.
- The overall positive response rate exceeded 93% in 2017.
- Parliament denied access in 30 cases, mainly in connection with applications for documents related to Members.

Trends

- In 2017 figures for applications for very large or indefinite numbers 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 certain period of time, etc.) dropped by 31%, compared to the previous year. The significant drop comes after a threefold increase between 2014 and 2015.
- Applicants maintained a strong interest in documents relating to the financing of European political parties and foundations over the course of 2017. However, they submitted even more requests for access to documents in relation to Members' expenditure and allowances or the administration of the Parliament, like documents pertaining to procurement procedures.

CHAPTER I

Applications for access to documents pursuant to Regulation (EC) No 1049/2001 in 2017

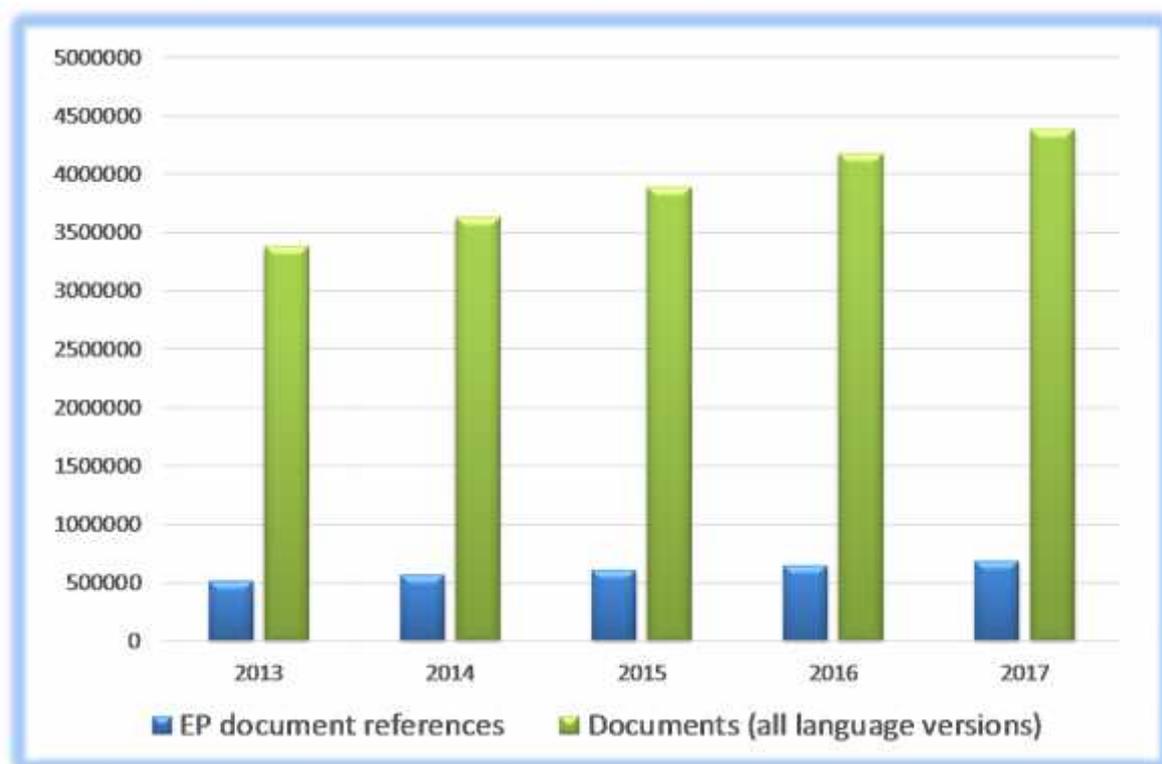
On top of giving the reader a broad picture of Parliament's implementation of Regulation (EC) No 1049/2001 over the years, the figures and statistics on applications for access to documents presented and discussed in annual reports, including this one, allow for the identification of trends, evolutions and issues in the field.

A) The public register of Parliament's documents

The public register of Parliament's documents gathers mostly references to legislative documents, and where possible, to other categories of documents, directly accessible. The register was set up in 2002 with a view to further increasing transparency and making it easier for the public to access the Institution's documents in accordance with Regulation (EC) No 1049/2001.

With a 6% increase on a year earlier, by 31 December 2017, the number of document references in the register's database reached 683 846 (representing 4 384 273 documents in all, taking the several 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.

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



B) Consulted and requested documents¹

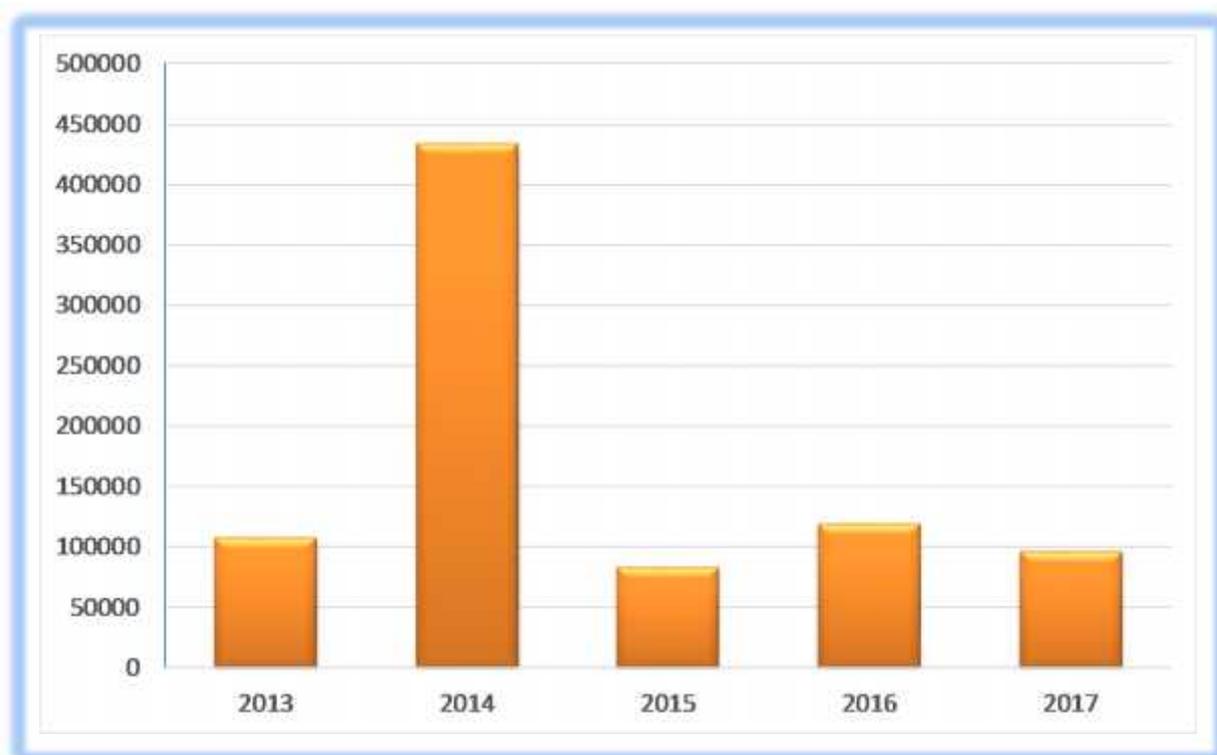
Almost all of the documents in the public register of Parliament's documents can be directly downloaded via the website, in line with Article 12 of Regulation (EC) No 1049/2001, which provides that the institutions shall make their documents directly accessible as much as possible. Those documents that cannot be consulted directly can be made available upon request via the online application form² or by e-mail.

B.1) Directly consulted documents

95 014 documents were directly consulted on Parliament's public register website in 2017. It is of note that that figure does not take into consideration consultations via other platforms linked to the register's database, such as parliamentary committees platforms and Parliament's Think Tank webpages.

The most frequently consulted documents were : parliamentary questions for written answer pursuant to Rule 130 of the Rules of Procedures (25.4%), answers to parliamentary questions (22.2%), committee reports (6.3%), documents received from the European Commission (3.9%).

(Fig. 2) **Number of documents consulted on Parliament's public register of documents website**



¹ These figures refer to specified documents only

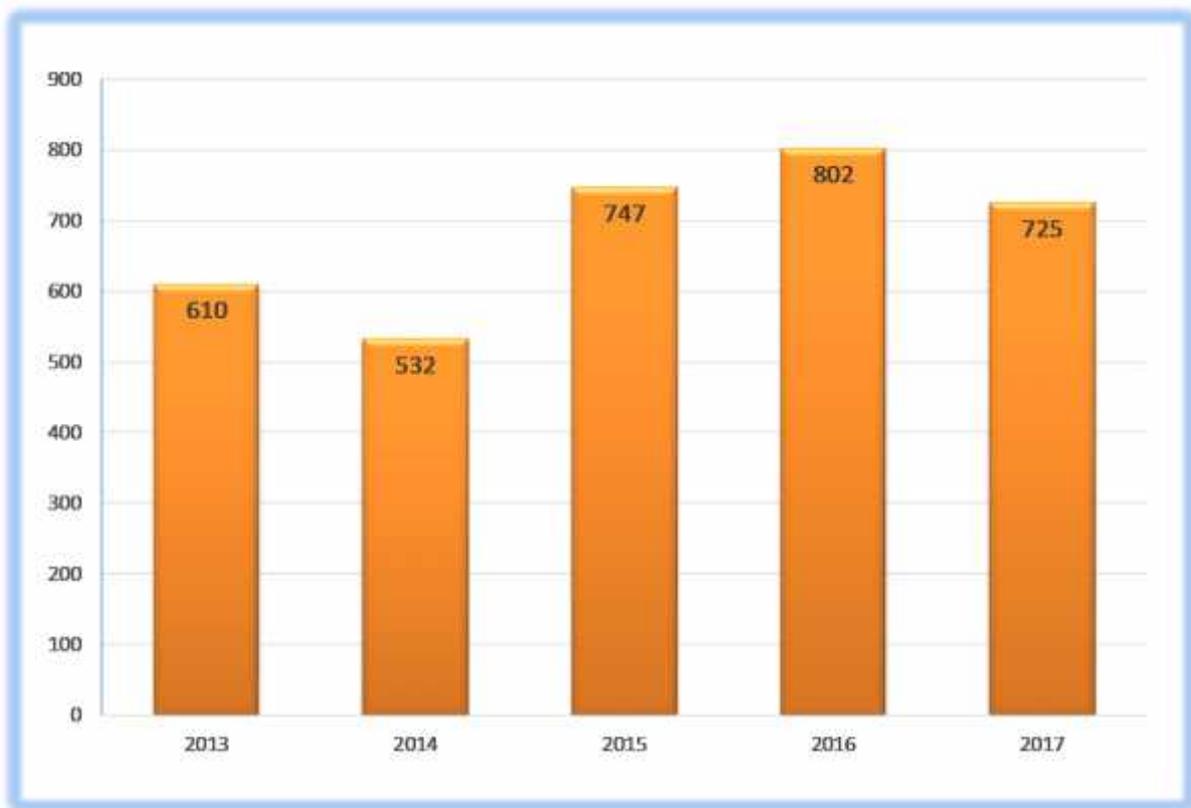
² <https://www.secure.europarl.europa.eu/RegistreWeb/requestdoc/secured/form.htm?language=EN>

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

In 2017, 725 specified documents were requested to Parliament via the online application form or by e-mail. It represents a decrease of 10% compared to the amount of specified documents requested the previous year.

As in previous years, the figure does not take account of applications for access to an indefinite number of documents, like requests for access to "all documents related to" a particular topic, "all documents containing information on" a particular theme, etc. The documents concerned by such applications cannot be quantified for statistical purposes.

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



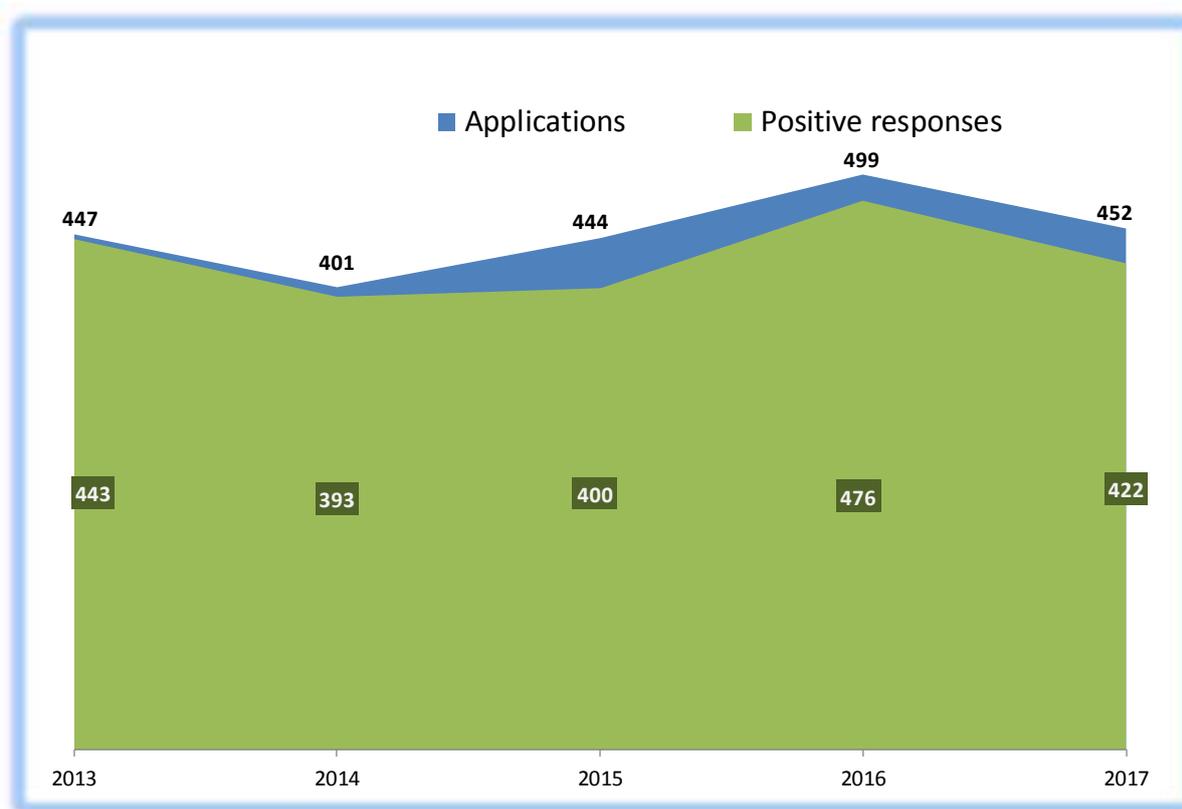
C) Figures on applications

Parliament received 452 applications through the online application system or by e-mail in 2017. 341 of those concerned specified documents, while 101 concerned indefinite numbers of documents and ten concerned inter-institutional consultations under the "Memorandum of Understanding"³ (see Chapter II, C).

About 22% of all applications received in 2017 requested access to either "all documents related to" a particular subject or "all documents containing information on" a particular theme. It is of note that the amount of such applications for an indefinite number of documents, which may be time costly to process, has fallen by 31% on a year on year basis.

Out of the 452 applications received in 2017, Parliament responded positively in 422 instances. This figure includes 14 cases in which access to the requested documents was partially granted.

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



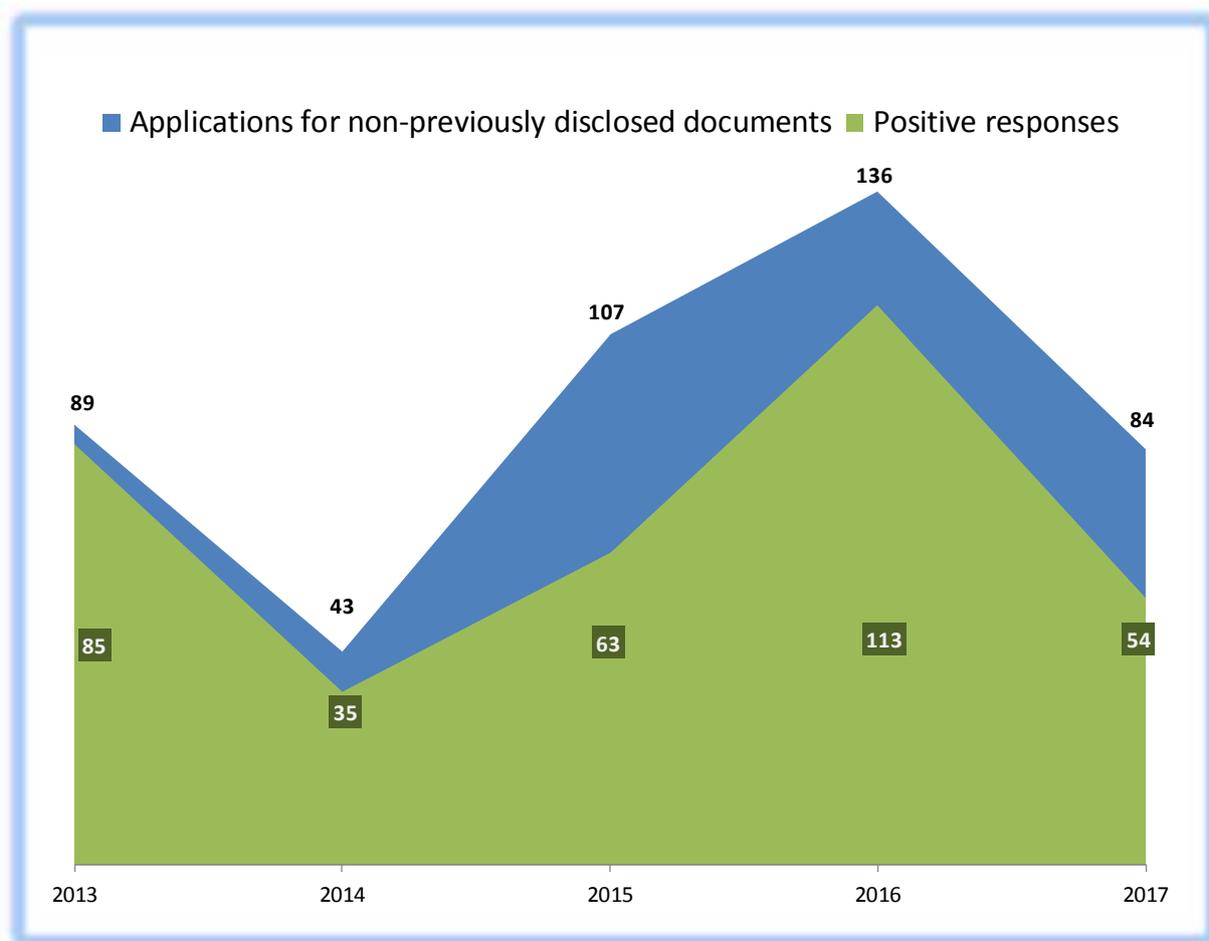
³ The Memorandum of Understanding entered into by the services of the European Parliament, the Council and the Commission in order to swiftly handle consultations under Article 4(4) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

Besides, 84 requests out of 2017's 452 applications involved documents not previously disclosed to the public.

Most applications for not previously disclosed documents concerned Members' political work and expenditure claims (26%), Parliament's administration (23%), the financing of political parties and groups (15%), legal opinions and court proceedings (10%) and trilogue negotiations (5%).

In 2017, Parliament responded positively 54 times out of the 84 applications for documents not previously disclosed.

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



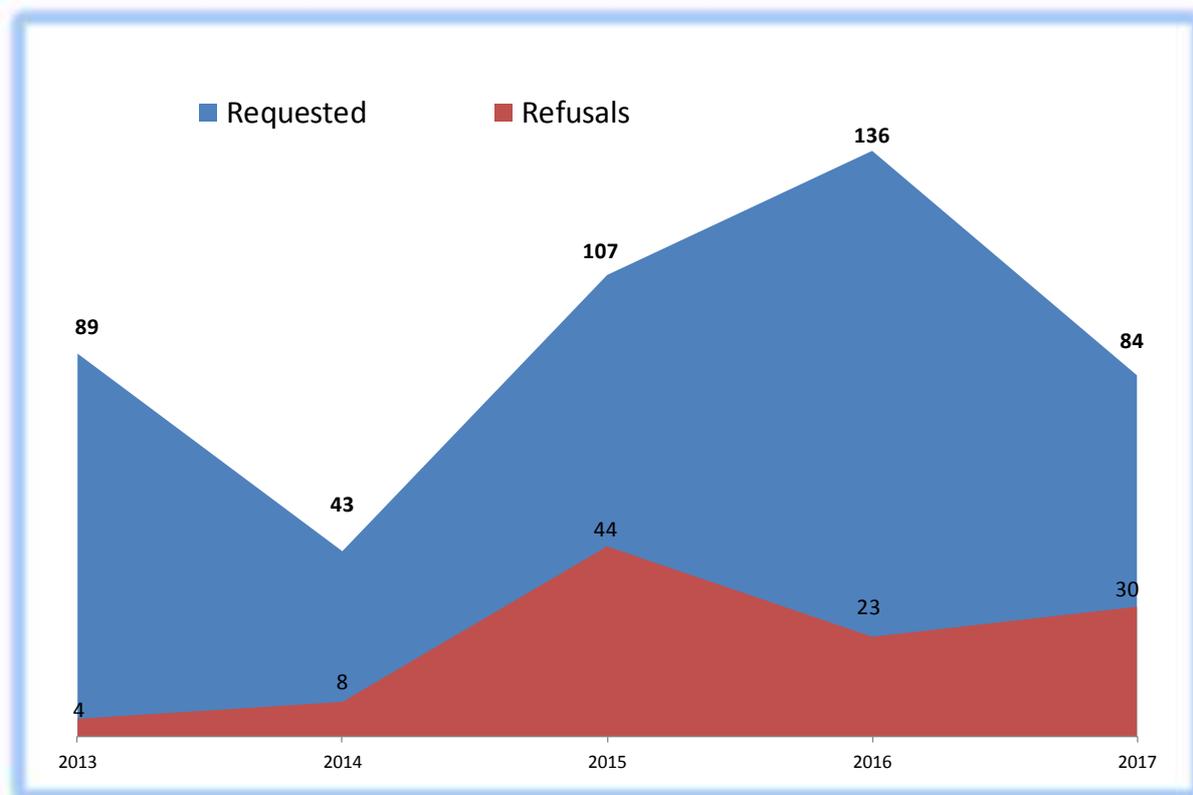
In 2017, Parliament denied public access to requested documents by means of a decision by the competent authority in 30 cases.

There were 11 confirmatory applications⁴ filed with Parliament following a refusal at the initial stage. In every case, the institution confirmed its initial position.

⁴ Confirmatory applications can relate to total refusal or partial access (Article 7 (2) of Regulation (EC) No 1049/2001). In 2017, two confirmatory applications were treated in one reply.

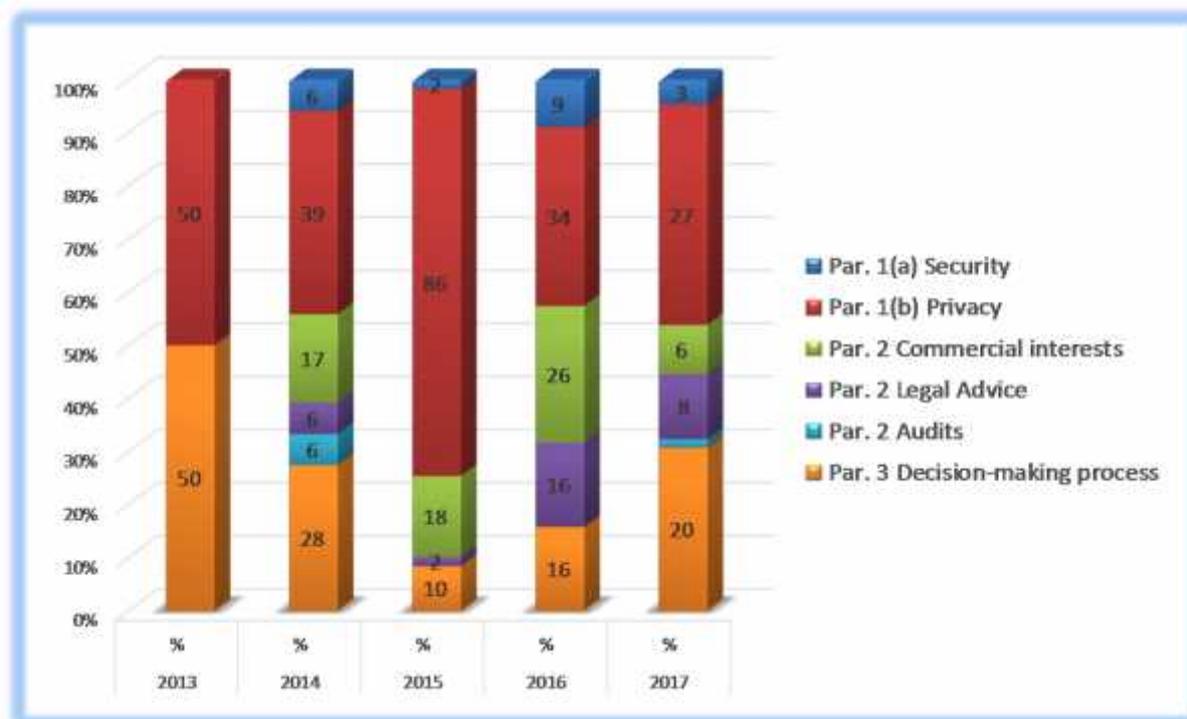
In 17 of the 30 refusal cases, the requested documents were related to Members. Nine cases concerned Parliament’s administration, three related to the financing of political parties and groups, and one concerned petitions.

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



This year’s refusals were principally based on the mandatory protection of the privacy and the integrity of individuals (point (b) of Article 4(1) of Regulation (EC) No 1049/2001), the decision-making process of the institution (Article 4(3) of Regulation (EC) No 1049/2001), the protection of legal opinions (second indent of Article 4(2) of Regulation (EC) No 1049/2001) and commercial interests of a natural or legal person (first indent of Article 4(2) 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 remained high in 2017, with an overall positive response rate of about 93%, and a positive response rate for applications involving not previously disclosed documents of 64%.

D) Applicants' profiles⁵

Academics and researchers still represent the largest share of applicants with over 33% of applicants pertaining to this category, followed by the business sector, environmental organisations and other interest representatives, accounting together for circa 20% of applications. Journalists, who account for 16% of applicants, represent the largest share of applicants for not previously disclosed documents.

The pattern as regards the geographical spread of applications among the Member States stays the same. About 18% of applications originated in Belgium, the country with the most applications, followed (in descending order) by Germany (15%), Spain (15%), France (11%), and Italy (10%). The number of applications from third countries accounted for approximately 4.6% of the total.

English remained the language most frequently used for applications (55%), followed by French (13%), German (11%) and Spanish (4%) following similar patterns as in previous years.

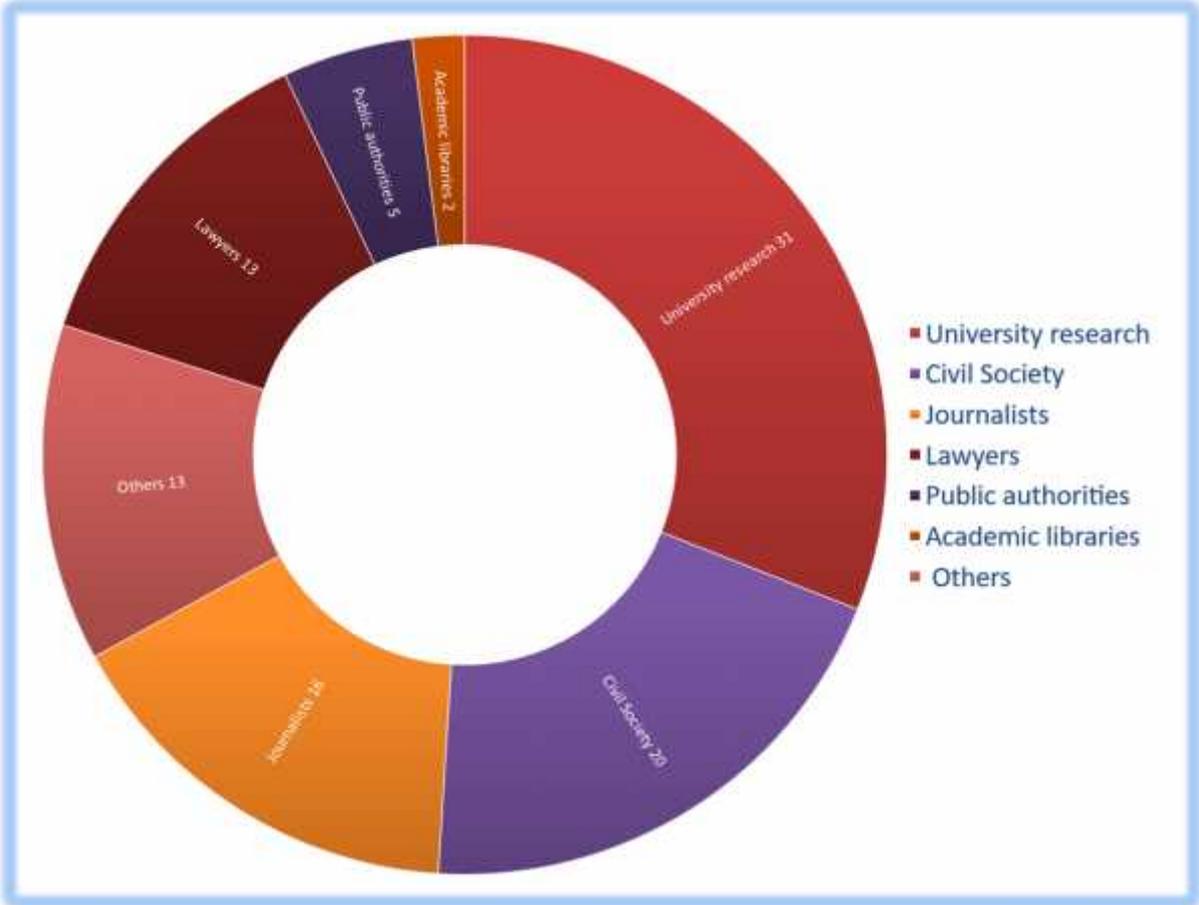
(Fig. 8) **Profiles of applicants for access to documents in 2017**

⁵ Data on applicants' profiles 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; this is the case in particular for applications submitted by email

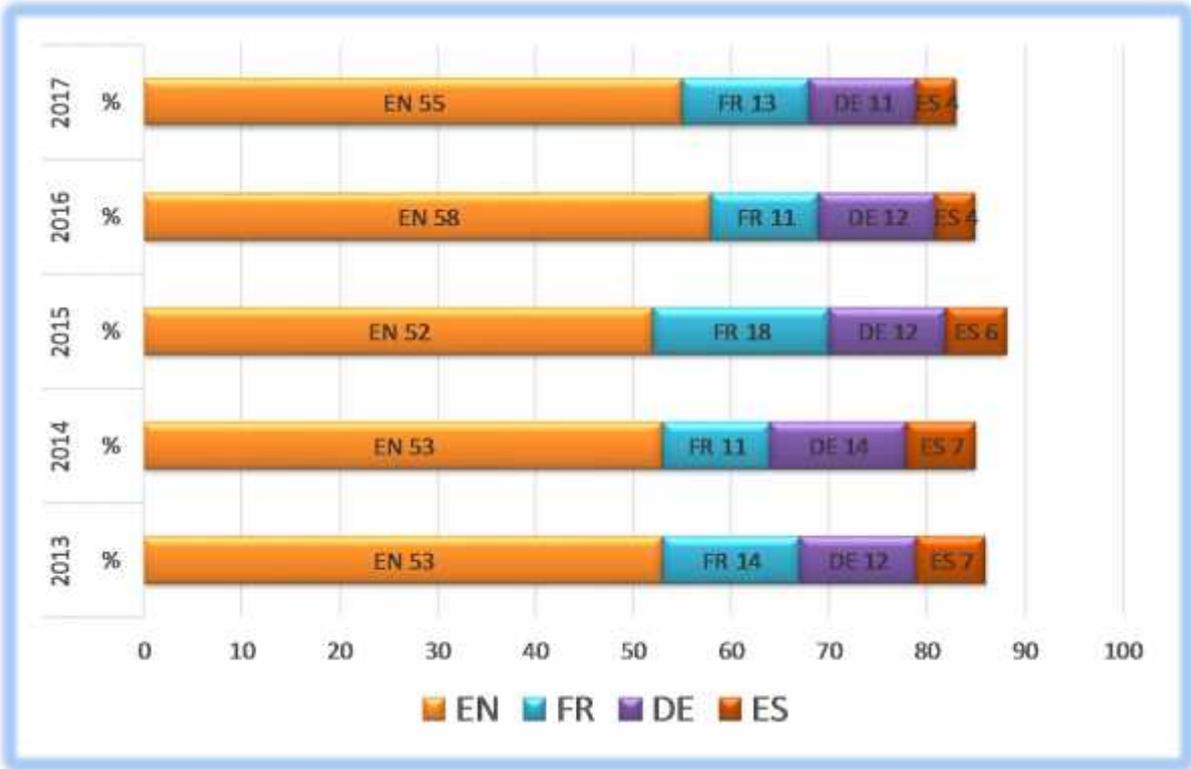
(Fig. 8a) **Nationality**



(Fig. 8b) **Profession**



(Fig. 8c) **Language**



CHAPTER II

Trends and specific issues

Important events within the European Union or particularly salient Parliament activities recurrently bring forth their share of applications for access to documents. Thus in 2017, a number of applications could clearly be linked to national elections in Member States or to newspaper articles on the financing of European political parties, a topic which the specialised press covered on many occasions lately. However, the main trends of the year were not so much the expression of punctual events as of long term interests. The topics with the most applications for access to documents over the last calendar round were Members' expenditure and allowance claims and particular administrative tasks of the European Parliament, such as procurement procedures. As illustrated by recent proceedings before the Court of Justice, which will be discussed below, the public has nurtured an interest in documents and information on those matters for many years.

A) Applications concerning Members' expenditure and allowances claims

The strong interest of the public in accessing documents or information on Members' allowances and expenditure claims persisted in 2017. 26% of all applications for not previously disclosed documents belonged to that category. In view of statements made in court hearings or in applicants' request forms, it appears that the objective of such applications is to increase public scrutiny over the use of public funds, including the general expenditure allowance of Members.

Parliament's practice

As a matter of principle, there is an organic separation between Parliament and its elected Members. Hence, it is not within the institution's remit to decide whether Members' personal documents, e-mail exchanges, agendas, letters or internal notes should or should not be disclosed. They are not Parliament documents. However, Rule 116(2) of Parliament's Rules of Procedure provides that, for the purpose of access to documents, the documents drawn up by individual Members are Parliament documents if they are tabled under the Rules of Procedure. Under that provision, expenses and allowance claims that Members submit to Parliament for reimbursement do indeed become Parliament documents and do fall within the scope of application of Regulation (EC) No 1049/2001. It is to those documents that citizens or organisations so often request access.

In treating applications for access to documents related to Members, Parliament takes into account Rule 116(2) of Parliament's Rules of Procedure and very often point (b) of Article 4(1) of Regulation (EC) No 1049/2001 on the protection of privacy and integrity of individuals applies.

Expenses and allowances claims contain a range of personal data as defined in Regulation (EC) No 45/2001. And therefore, Parliament in most such cases has to refuse access to the document on the basis of the protection of the privacy and integrity of individuals, as is set

out in point (b) of Article 4(1) of Regulation (EC) No 1049/2001 read in conjunction with Regulation (EC) No 45/2001⁶.

Parliament's approach to access to such documents is supported by the guidelines decided by the Bureau on 20 February 2008 on the basis of the best practices observed in national parliaments. According to those guidelines, detailed breakdowns of the amounts actually paid out to individual Members are not made public, although Members remain free to disclose the information they want to share with the public.

B) The case of requests for documents related to call for tenders and procurement procedures

Another 2017 trend that deserves a section in this report is the interest of the public in accessing procurement procedure files. Tenderers and also sometimes researchers or journalists introduce applications for access, under Regulation (EC) No 1049/2001, to documents relating to public procurement procedures. This kind of applications has raised a range of issues over time, some of which have been sorted out, if not entirely, at least partly, in 2017.

Excessive number of documents

Contrary to some national laws, Regulation (EC) No 1049/2001 does not contain any provision on abusive or clearly unreasonable applications. Yet, some applicants request access to very long documents or very large files, and complex applications may generate a heavy administrative burden for the institution. Their handling often requires in-depth research work, detailed analysis and the involvement of several services within Parliament.

In such situations, Parliament has the options to extend the statutory deadline to reply to the applicant by a further 15 working days under Article 7(3) of Regulation (EC) No 1049/2001 and to confer informally with the applicant to find a fair solution under Article 6(3) of the same regulation. However, these opportunities have not always proved enough or adequate. Absent an agreement between the applicant and Parliament to narrow down the scope of the request to a workable amount of documents, there was until recently no judicially tested way to actually address the heavy administrative burden issue that these requests entailed.

The Court of Justice had pointed out that, in particular cases in which the volume of the documents or of the passages to be censored would give rise to an unreasonable amount of administrative work, the principle of proportionality would allow the institutions to balance the interest in public access against the burden of work caused by the application. This possibility and the conditions to resort to it have now been recognized and established by the Court in Case T-136/15, *Evropäiki Dynamiki v Parliament*. This case concerned an application for access to all available information concerning all the requests for quotations, which were issued by the Parliament in all specific lots relating to an IT framework contract.

The judges confirmed that where there is no alternative to an individual assessment of the requested documents, where such an examination involves an unreasonable workload, and where the institution has sought to reach an agreement to reduce the scope of the request

⁶ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8, 12.1.2001, p. 1–22

to no avail, then the institution may validly deny access to the documents on the basis of an excessive workload.

The special case of documents relating to the funding of European political parties

In order to receive funding from the budget of the European Union to finance their functioning over the course of a financial exercise, European political parties and foundations may, in response to an annual call for proposals, apply for a grant before the start of each financial exercise.

The funding procedure was originally set up under Regulation (EC) No 2004/2003, and rules in the matter provided for direct publicity of specific information. Concomitantly, Parliament received many applications for public access, under Regulation (EC) No 1049/2001, to documents or information on the administration of the funding process, the disclosure of which was not explicitly provided for. Several of those aimed to get access to the political parties' grant application dossiers. The details of the grant applications and the sensitivity of the information that they comprise are such that, where the disclosure of an application was requested under Regulation (EC) No 1049/2001, Parliament would usually conclude that they could not be disclosed without compromising the organisation's core objectives and activities. As a consequence, access to the grant applications had to be refused so as to protect the parties or foundations' commercial interests, in accordance with the first indent of Article 4(2) of Regulation (EC) No 1049/2001.

Since Regulation (EU, Euratom) No 1141/2014 entered into force and replaced Regulation (EC) No 2004/2003 with effect from financing year 2018, things have changed. Not only did the new regulation establish the Authority for European Political Parties and European Political Foundations (the 'Authority'), an independent body that manages the registration of European political parties and foundations, but it also provided for automatic publication of information and documents relating to those political parties and foundations directly by the Authority. As a result, Parliament expect the number of applications for access to documents on political parties and foundations to significantly drop.

C) Consultation of third parties

Where Parliament is asked, under Regulation (EC) No 1049/2001, to assess the potential publication of a document that it holds but that originates from a third party, Parliament may have to consult the originator on its position as to the public disclosure of the document. Usually the author of a document is in a better position, than its occasional holder to assess whether it can indeed be disclosed.

Inter-institutional consultations

Where the third party is the Commission or the Council, Parliament consults the third party pursuant to a specific Memorandum of Understanding entered into by the three institutions in 2002. And *vice a versa*, in accordance with that same memorandum, Parliament is consulted by the Commission or the Council where they have been requested to disclose a document originating in Parliament.

The three institutions committed under the agreement to complete such preliminary consultations within a time frame that allows them to finalise the handling of applications

for access to documents within the mandatory time limits stipulated by Regulation (EC) No 1049/2001. This process also enables the institution handling the application to get a better understanding of the requested documents and interests at stake before taking a decision. In 2017, Parliament was involved in ten consultations under the Memorandum of understanding.

Consultation of other third parties

Where Parliament is asked, under Regulation (EC) No 1049/2001, to assess the potential publication of documents that it holds but that were produced by third parties other than the Council or the Commission, Parliament is bound to consult the third parties about the release of the documents in so far as it is not clear that the documents shall or shall not be disclosed. Since those third parties have not expressly committed to replying to the consultations within a determined time frame, this complicated the handling of the application concerned.

In July, as the Court of Justice confirmed in its decision on Case C-213/15 P the view according to which court submissions are to be considered as any other document for the purpose of Regulation (EC) No 1049/2001, Parliament received applications for access to all submissions relating to a few proceedings Parliament had been involved in. This led Parliament to launch rounds of consultations to all the parties whose submissions Parliament was in possession of, including those of several Member States. Parliament eventually released the requested documents in so far as their authors confirmed that they could be disclosed. In the alternative, Parliament established, on the basis of the exceptions to the right of access provided for by Regulation (EC) No 1049/2001 and in view of the case law, that the requested submissions could not be disclosed.

CHAPTER III

Complaints Lodged with the European Ombudsman and Court cases

Complaints to the European Ombudsman and court proceedings brought in relation to Parliament's implementation of Regulation (EC) No 1049/2001 are frequently an opportunity for the administration to fine tune its practice in access to documents matters, independently from the outcome of the procedure at stake. This chapter reports on the complaints filed with the Ombudsman in 2017 and ongoing court proceedings.

A. New complaints

- Complaint 611/2017 and Complaint 895/2017

A journalist whose applications for access to documents involving in particular personal data of staff members had been refused filed two complaints with the Ombudsman in Spring 2017. The two complaints are very similar. The first one concerns Parliament's decisions to extend the time limits for dealing with the applicant's requests, and the fact that Parliament denied access to specific documents. In the second one, the applicant alleged, again, that Parliament unduly extended the time limit for replying, that Parliament wrongly refused access to a specific document, and that Parliament registers some documents in a way that is not compatible with Regulation (EC) No 1049/2001.

The services of the Ombudsman inspected the documents at stake in Summer 2017. Presently, Parliament is awaiting the conclusions of the Ombudsman.

- Complaint 1956/2017

In November, an applicant submitted to the Ombudsman a complaint in relation to an application for public access to documents involving personal data of members of the European and national parliaments. The inquiry has since been closed without need for further follow-up.

B. Judicial Review

B.1) New Cases

Parliament's decisions on access to documents are relatively seldom challenged. This year a single action in annulment was lodged with the Court of Justice.

In July, a professor of EU law filed an action in annulment of a 3 April 2017 Parliament decision by which the institution refused to grant public access to a Parliament decision dated 8 July 2015 on the basis that this latter decision was itself being challenged before the Court and that its disclosure would have undermined court proceedings (Case T-421/17, *Leino-Sandberg v Parliament*).

B.2) Court Judgements

At the start of the year, there were three pending cases involving access to documents and the European Parliament: Case T-136/15, *Evropäiki Dynamiki v Parliament* (public procurement procedures), Case T-540/15, *De Capitani v Parliament* (trilogue documents), and Cases T-639/15 to T-666/15, *Journalists v Parliament* (Members allowances and expenditure). The Court held a hearing in each one of those cases over the course of the year and has since handed down a decision in Case T-136/15, *Evropäiki Dynamiki v Parliament* and Case T-540/15, *De Capitani v Parliament*.

1) Case T-136/15 - *Evropäiki Dynamiki v Parliament*

In that case, the applicant asked Parliament for access to all available information concerning all the requests for quotations related to a number of tender procedures. Parliament informed the applicant that, given the very large number of documents to be examined individually, it could not meet the deadlines laid down by Regulation (EC) No 1049/2001 on access to documents and suggested to the applicant that a 'fair solution' be sought within the meaning of Article 6(3) of that Regulation. The applicant replied negatively to the suggestion. Against that background, Parliament refused access to all the requested documents arguing that the amount of work involved in their assessment was excessive.

The Court confirmed Parliament's position according to which an institution could refuse access to documents on the grounds of a disproportionate administrative workload. The Court held that an institution may indeed refuse access to documents on the basis of an unreasonable workload provided that 1) the workload represented by the individual examination of the documents requested is unreasonable, 2) the institution has consulted with the applicant in order to seek a fair solution and 3) the institution has genuinely investigated all other conceivable options to an individual examination.

This finding is noteworthy for cases where it would be difficult to process them within the time limits provided for by Regulation (EC) No 1049/2001.

2) Case T-540/15 - *De Capitani v Parliament (trilogue documents)*

In this case, the applicant sought annulment of Parliament's decision of 8 July 2015 to provide only partial 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).

The Court held a hearing in September 2017, and delivered its judgment on 22 March 2018. The judges considered that Parliament did not demonstrate that the full public release of the requested multi-column tables before the completion of the legislative procedure would have seriously undermined the legislative process. Consequently, they annulled Parliament's decision for failure to state reasons.

3) Cases T-639/15 to T-666/15 *Psara e.a. v Parliament (Members allowances and expenditure)*

29 actions were brought to the General Court in November 2015 by a number of journalists,

following Parliament's decisions to refuse public access to supporting documents concerning all Members' expenditure and allowances on the grounds of protection of the privacy and integrity of individuals.

The number of documents requested was in the order hundreds of thousands.

Upon Parliament's refusal to accede to the requests, notably based on the ground of the protection of the privacy of individuals provided for by Regulation (EC) No 1049/2001 and also on the impossibility to assess the sheer number of requested documents, which was not reduced to a workable amount, the applicants sought annulment before the General Court. The hearing took place in October 2017. The judgement is expected in 2018.

Final Remarks

As Parliament's responsibilities have grown over the years since the entry into force of Regulation (EC) No 1049/2001 so has the interest of the public in the institution. People are now more aware and better informed of the fact that Parliament automatically and directly publishes almost all the legislative material produced within its walls. Correlatively, the number of misguided requests, for access to documents that are actually already public, has gone down, and requests have grown more specialised. Many applicants, journalists or researchers seek access to internal reports and information on the administrative tasks of the house. This focus is expected to persist, and even increase with the upcoming 2019 European elections.

At the same time, the rate of actions in annulment of its decisions in the matter and the recent favourable ruling of the Court in Case T-136/15 indicates that Parliament generally strikes the correct balance between the right of access to documents and the exceptions to that right.