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# Public Access to Documents 2014

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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

*March 2015*

## 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 2014 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 2014 annual report comes with a modified layout and an adapted methodology. The approach goes towards improved user-friendliness and a coherent set of figures. Due to a modified structure, it is in some cases no longer possible to compare 2014 figures with those provided in the reports for the previous years.

In particular, according to the 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 (hereinafter "unspecified documents"), are not reflected in the statistics on consulted and requested documents;
- Figures on applications for access to documents take account of both specified and non-specified 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 Bureau contribution to the European Parliament's Annual Report on Public Access to Documents - 2014 (Article 17 of Regulation (EC) No 1049/2001)

## ***Executive Summary***

### *Figures*

- The number of document references in the public register continued to grow, with a 10% increase compared to 2013. By 31 December 2014, the register's database contained 560 724 document references.
- 433 576 documents were consulted directly on the website of Parliament's public register, that is more than four times the number of documents directly consulted in 2013. During the same period, Parliament received, via the online application form or by e-mail, 370 applications (43 requesting documents not previously disclosed), involving 532 specified documents, with an apparent 14% decrease compared to 2013. This decrease, however, does not take account of an additional 31 applications relating to a large or indefinite number of unspecified documents, which it is not possible to record for statistical purposes.
- Of the 532 specified documents, 95 had not been previously disclosed to the public. Parliament released 80, in two cases granting partial access. The overall positive response rate in 2014 was therefore 98%, in line with the trend of previous years.
- Four confirmatory applications, under Article 8 of Regulation (EC) No 1049/2001, were tabled following refusal at the initial stage. In three cases, Parliament confirmed its initial position, while in one case Parliament granted wider access to the requested document.
- Academics and researchers continued to represent the largest share of applicants: 39% of applicants came from this category.

### *Trends*

- Of the applications received by Parliament in 2014, 8.5% concerned documents related to Members, in particular to budget allocation and expenditure of allowances of individual Members, documents of the Advisory Committee on Members' Code of Conduct, as well as documents that could possibly show contacts between interest representatives and individual Members in the context of legislative procedures.
- The increased use of interactive websites like 'Ask the EU' contributed to a greater visibility of the public register, but at the same time created concern as to the application of certain legal requirements imposed on the institutions.
- A growing complexity is observed in certain applications, in particular from unsuccessful tenderers in public procurement procedures for access to documents related to the procedures they had tendered for.
- In 2014, one new complaint was lodged with the Ombudsman against Parliament concerning a request for public access to petitions containing personal data. The Ombudsman's enquiry into complaint 262/2012/OV on coordinators' minutes was successfully closed with a further remark asking Parliament to include existing minutes of coordinators from the 2009-2014 parliamentary term in the public register.

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## CHAPTER I

### *Implementation of Regulation (EC) No 1049/2001 in 2014*

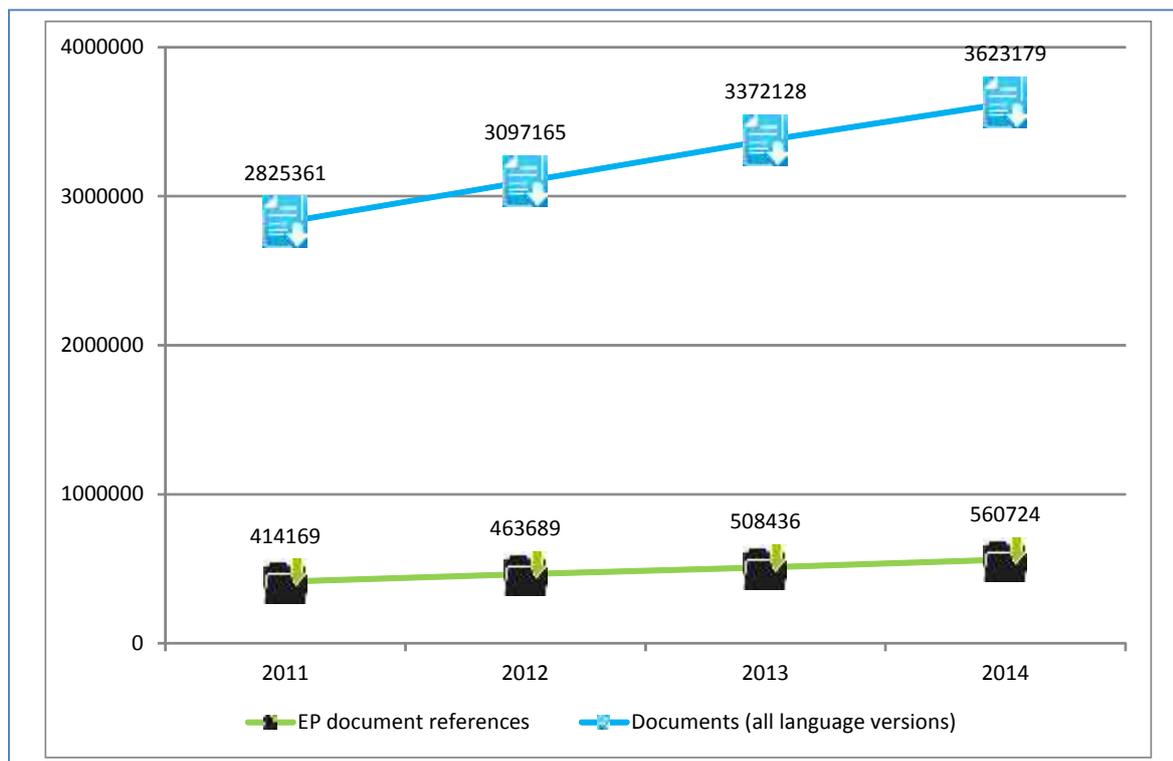
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#### **A) Content of the public register of Parliament's documents**

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 a 10% increase in 2014 compared to 2013. By 31 December 2014, the register's database contained 560 724 document references (representing 3 623 179 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

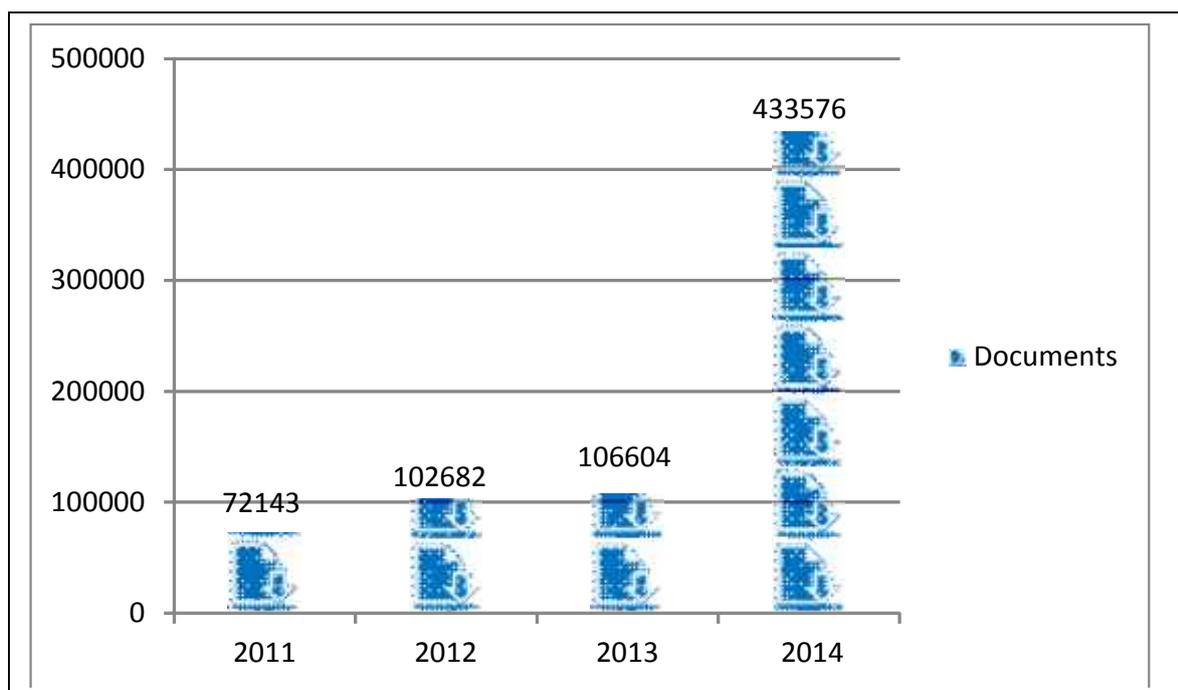
In accordance with Article 12 of Regulation (EC) No 1049/2001, 90-95% of Parliament documents can be consulted directly on Parliament's public register website<sup>1</sup>. Documents that are not directly consultable can be requested via the online application form<sup>2</sup> or by e-mail.

### B.1) Documents directly consulted

Most frequently, visitors connected to Parliament's public register website via the Google search engine or via the Europa portal. Since 2011, the Parliament's public register website has experienced a steady rise in the number of documents consulted. In 2014, 433 576 documents were consulted directly on Parliament's public register's website, that is to say more than four times the number of documents directly consulted in 2013.

The types of documents mostly consulted were (in descending order): questions for written answers<sup>3</sup> (37.17%); answers to questions (31.08%); adopted texts (3.9%); notices to Members (3.55%); motions for resolutions (3.13%); amendments to reports (2.25%); reports (2.21%); committee agendas (1.26%) and committee minutes (1.6%).

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



<sup>1</sup> <http://www.europarl.europa.eu/RegistreWeb/search/simpleSearchHome.htm?language=EN>.

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

<sup>3</sup> Rule 130 of Parliament's Rules of Procedure.

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

In 2014, Parliament received 370 applications, via the online application form or by e-mail, involving 532 specified documents, with an apparent 14% decrease compared with the amount of specified documents requested in the previous year.

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

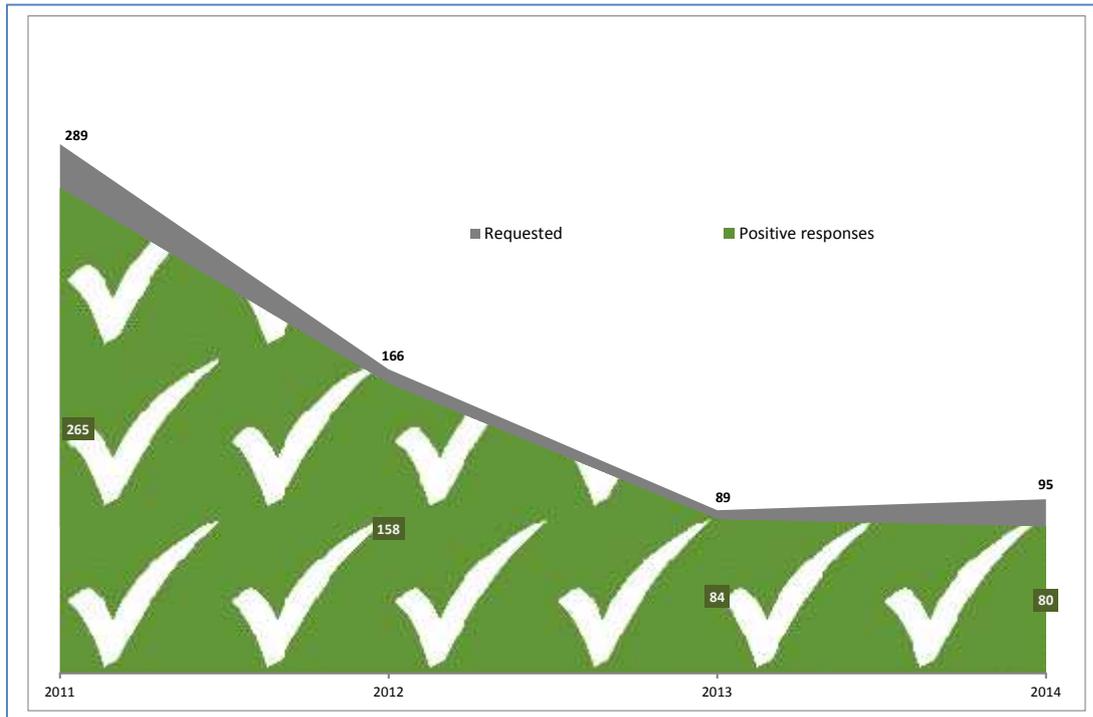


However, such a decrease does not take account of an additional 31 applications received by Parliament in 2014, requesting access to a large or indefinite number of documents (sometimes more than 1000), which it is not possible to record for statistical purposes, as they involve considerable identification and research work due to their creation date, classification, subject matter, or the number of years covered (e.g. application made for "all documents related to...", "all documents containing information on...", "documents from 1995 to today on..." etc.)<sup>4</sup>.

Of the 532 specified documents, 95 were documents not previously disclosed to the public. Parliament released 80 out of the 95 specified documents not previously disclosed, in two cases granting partial access.

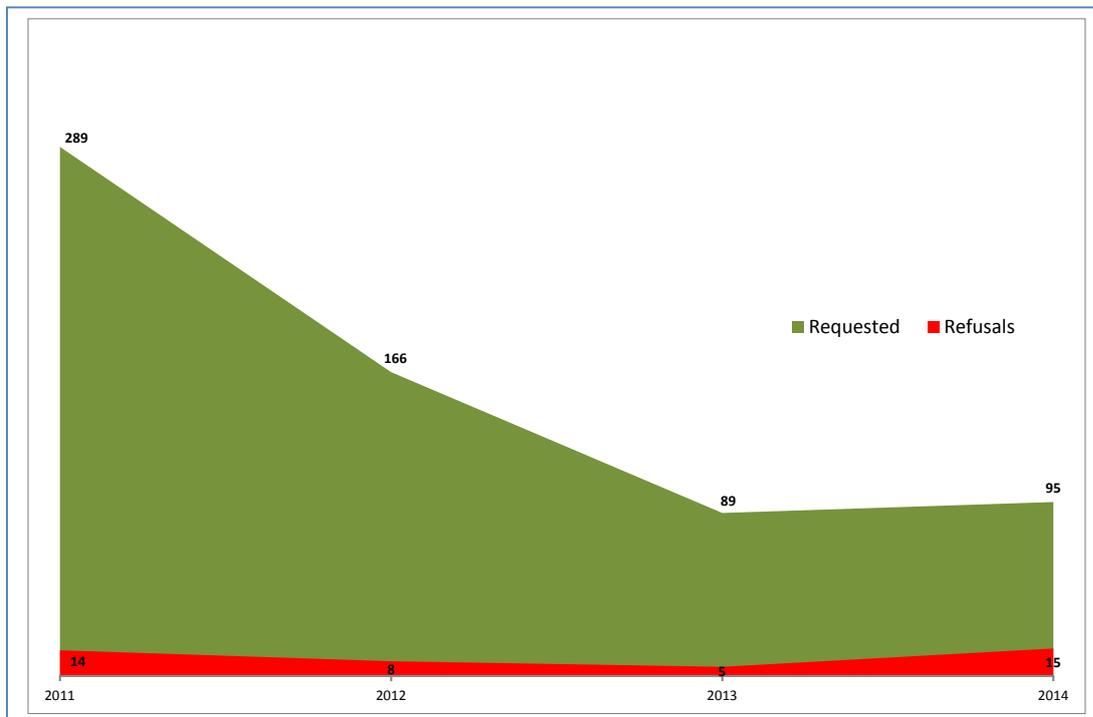
<sup>4</sup> Applications for unspecified documents are not reflected in statistics contained in this report referring to the number of requested documents.

**(Fig. 4) Number of specified documents not previously disclosed and documents released**



In 2014, Parliament denied public access to 15 specified documents not previously disclosed.

**(Fig. 5) Number of specified documents not previously disclosed and documents refused**



### C) Figures on applications<sup>5</sup>

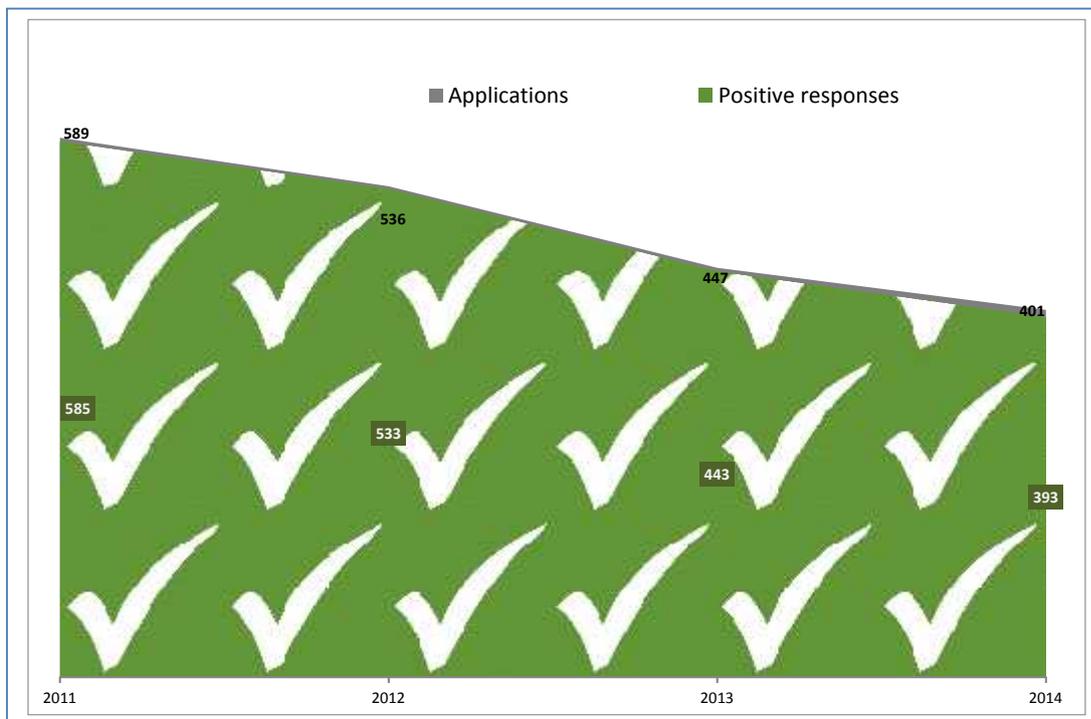
In 2014, Parliament received a total of 401 applications, 43 of them involving documents not previously disclosed to the public.

Applications concerned mainly MEP-related documents (8.5%), administrative documents related to infrastructure and finance (7.0%), adopted texts (6.9%), verbatim reports of proceedings (4.7%), Bureau documents (4.4%), official correspondence (4.2%), and petitions (2.2%).

In particular, applications for non-previously-disclosed documents concerned mainly Parliament legal opinions (16%), Members' expenditure (11%) Bureau notes (5%) and other internal reports, notably reports on trilogue meetings (7%).

Out of 401 applications received in 2014, Parliament responded positively in 393 instances, granting access to the requested documents. In two cases, Parliament granted partial access only.

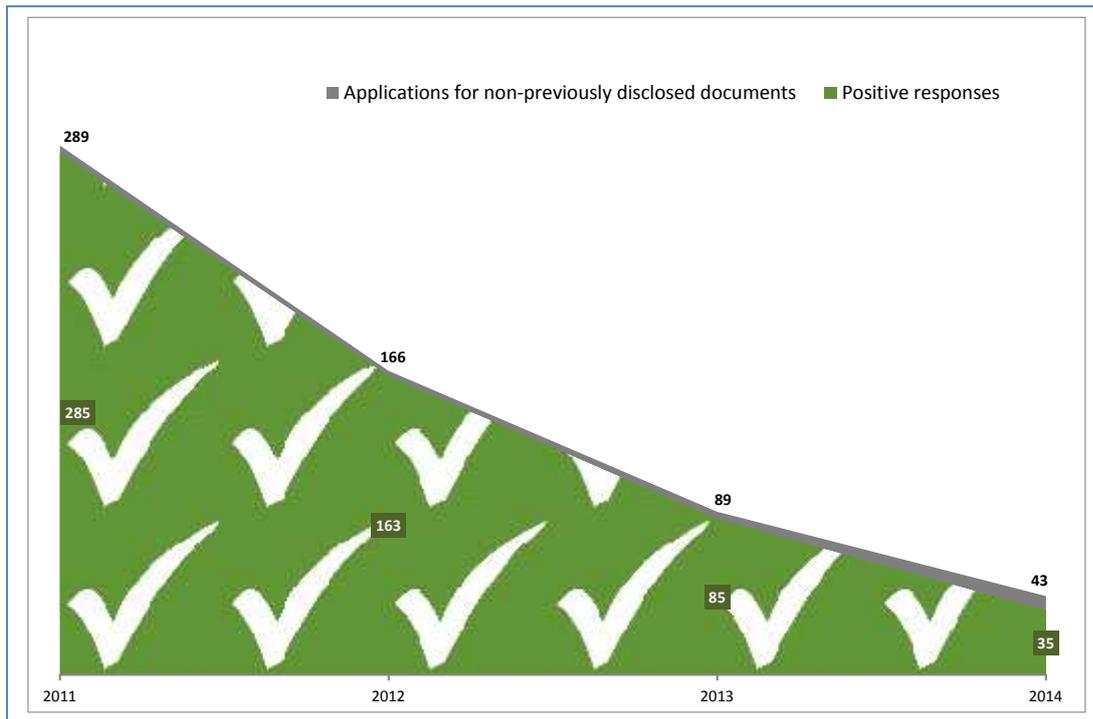
(Fig. 6) **Number of applications and positive replies**



<sup>5</sup> Applications concern specified and non-specified documents.

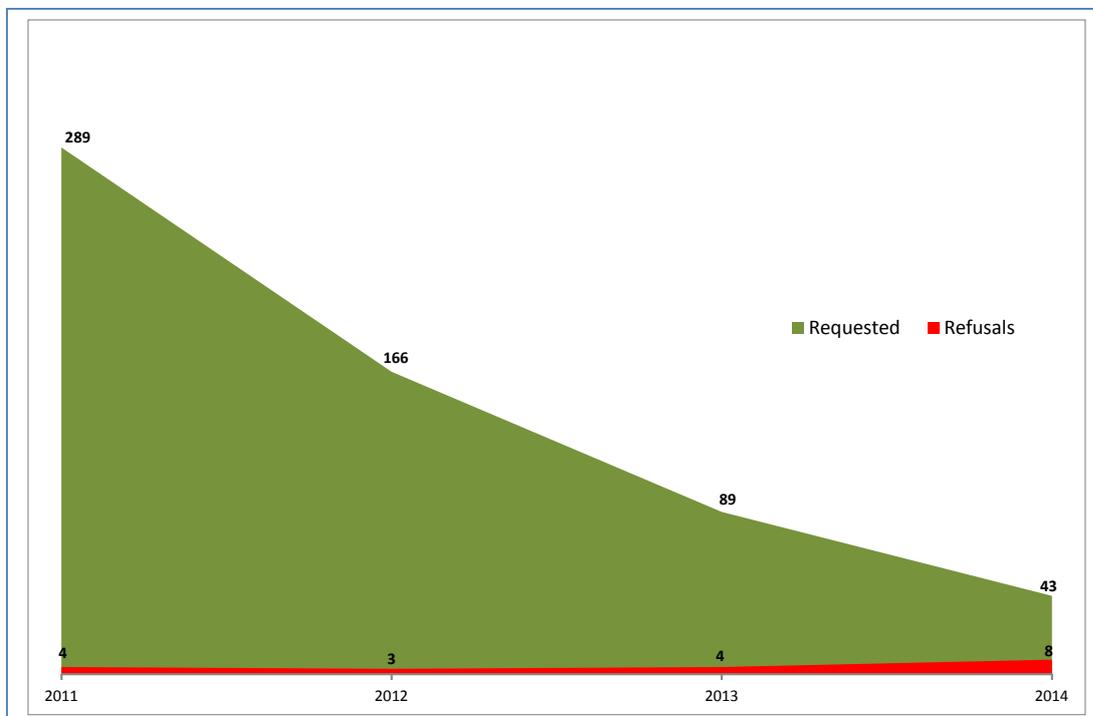
As far as documents not previously disclosed are concerned, Parliament responded positively to 35 out of the 43 applications received in 2014.

**(Fig. 7) Number of applications for not previously disclosed documents and positive replies**



In 2014, Parliament denied public access in eight cases by means of a decision signed by the Secretary General, the competent authority for initial applications.

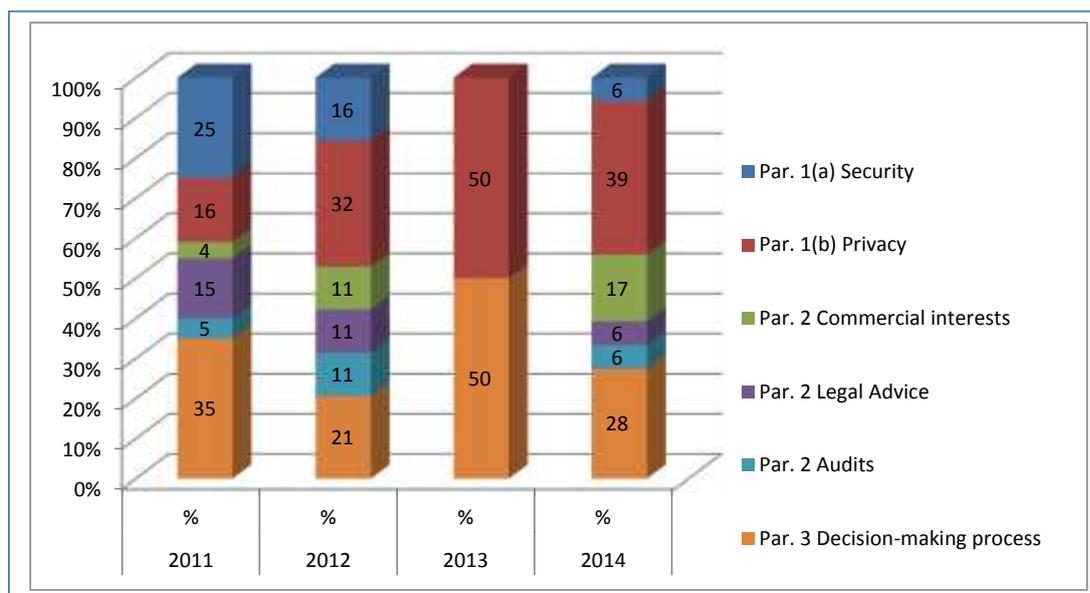
**(Fig. 8) Number of applications for not previously disclosed documents and refusals**



Four confirmatory applications<sup>6</sup>, under Article 8 of Regulation (EC) No 1049/2001, were tabled following refusal at the initial stage. In three cases, Parliament confirmed its initial position, while in one case it granted wider access to the requested document.

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

**(Fig. 9) Rate of use of exceptions under Article 4 of Regulation (EC) No 1049/2001**



In conclusion, Parliament's positive response rate in 2014 remains in line with the trend achieved in previous years, with an overall positive response rate of 98 %, and a positive response rate for applications involving non-previously-disclosed documents of 81%.

Once released, documents become publicly available and directly consultable on Parliament's public register website.

#### **D) Applicants' profiles**

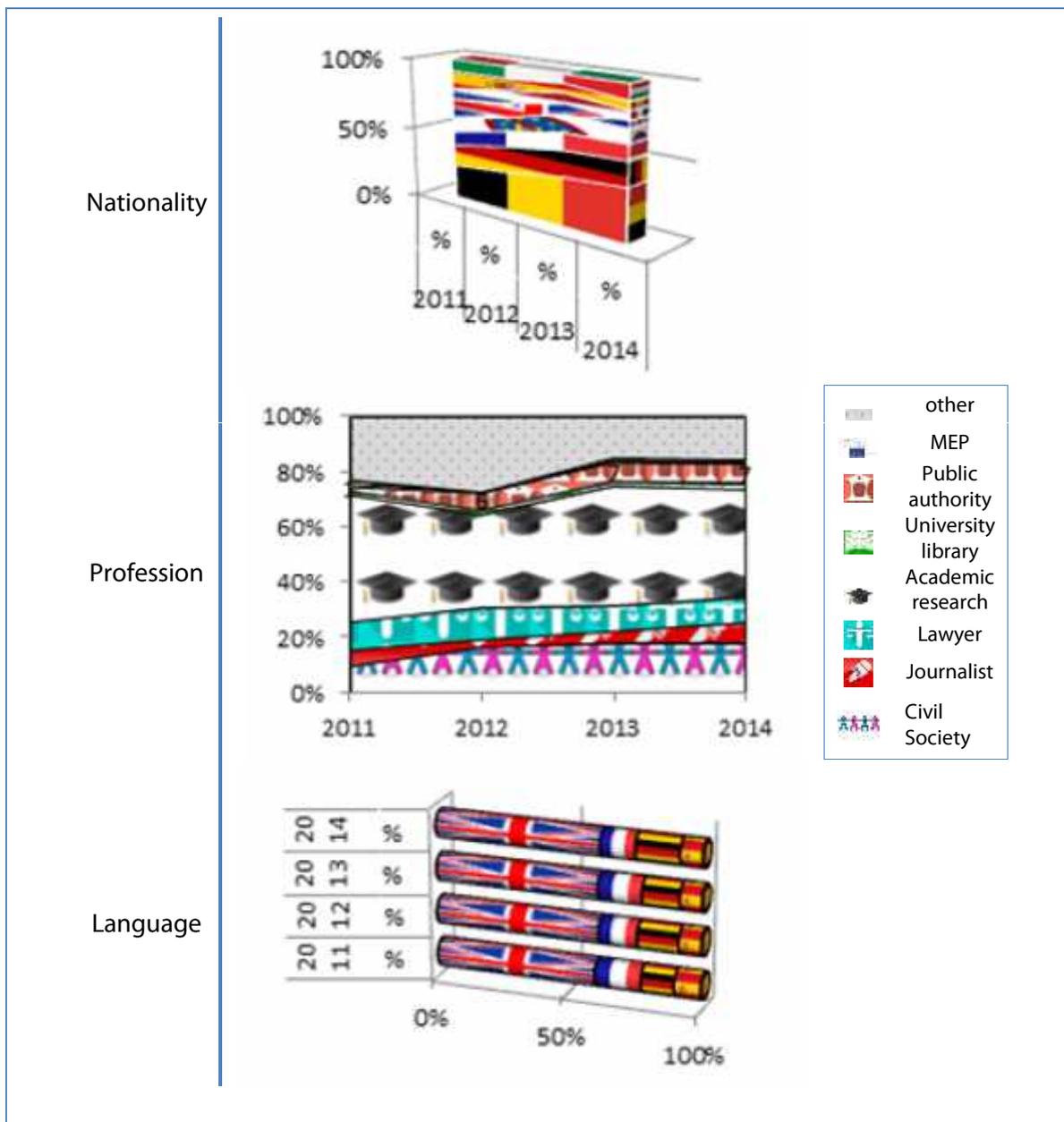
Academics and researchers continued to represent the largest share of applicants. 39% of applicants came from this category, followed by the business sector, environmental organisations and other interest representatives, accounting together for 18% of applications. The proportion of requests from lawyers remained more or less stable at 9%.

As regards the geographical spread of applications among the EU Member States, the pattern for 2014 was very similar to that seen in previous years. 31% of applicants were Belgium-based, followed (in order of size) by Germany (14%), France and Italy (each 9%), the Netherlands and Spain (each 5%), and the United Kingdom (4%). Applications from third countries dropped slightly and accounted for approximately 8% of the total.

In 2014, the language most frequently used for applications was English (53%), which was steady compared with previous years, followed by German (14%), French (11%) and Spanish (7 %).

<sup>6</sup> Confirmatory applications can relate to total refusals or partial access (Article 7(2) of Regulation (EC) No 1049/2001).

(Fig. 10) Profiles of applicants for access to documents in 2014<sup>7</sup>



<sup>7</sup> © of images in the graphs: salem / Fotolia - kebox / Fotolia- Pekchar / Fotolia - DIDEM HIZAR / Fotolia - Claudio Divizia / Fotolia - ravenka / 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.

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## CHAPTER II

### *Trends and specific issues related to access to documents in 2014*

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#### **A) Documents related to Members**

Of the applications received by Parliament in 2014, 8.5% concerned documents related to Members, in particular to budget allocation and expenditure of allowances of individual Members, documents of the Advisory Committee on the Code of Conduct for Members, as well as documents reflecting any influence of interest representatives on individual Members in the context of legislative procedures (agendas and minutes of meetings of Members/rapporteurs with interests' representatives, Members correspondence, etc.).

As regards applications for access to detailed breakdowns of allowances and expenditure of individual Members, Parliament applies the guidelines given by the Bureau on 20 February 2008, on the basis of the best practices observed in national parliaments. Building on this approach, Parliament has developed a proactive policy of publishing on its website general information on the allowances to which Members are entitled and the rules governing their allocation. On the other hand, detailed breakdowns of the amounts actually paid out to individual Members are not made public, although Members are free to disclose additional information.

#### **B) Increased use of interactive websites**

In recent years, a growing trend has been observed among applicants to introduce requests for access to documents via public internet portals, which publish the requests together with replies provided by the institutions.

For instance, in 2014, Parliament received 55 applications for access to documents (representing 14% of all requests) via the website 'Ask the EU', a project of the Access Info Europe platform. The Parliament's Transparency Unit's functional mailbox for access to documents has been the unique point of entry for all requests introduced via this website since its launch, independently of the object of the request (documents, information, complaints, etc.). The website provides a system generating *ad hoc* email addresses for submitting requests for access to documents, without requiring users to provide any information about their identity.

Replies to requests channelled via 'Ask the EU' are automatically uploaded on to the organisation's website and become publicly available. Requests to, and replies from, the Parliament are accessible in a particular section of the 'Ask the EU' website<sup>8</sup>.

Regulation (EC) No 1049/2001 does not require applicants to provide information about their identity nor to give reasons for their requests. However, in some circumstances, the absence of any data or information regarding the applicant may become an issue for the proper handling of requests and the correct application of certain legal requirements imposed on the institution, such as the scope of possible redress, personal data protection regulation, protection against identity theft, or the use of a false identity.

A particular source of concern might be the lack of any postal address of the applicant. The indication of a postal address not only enables Parliament to counter abusive recourse to access to

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<sup>8</sup> [http://www.asktheeu.org/en/body/european\\_parliament](http://www.asktheeu.org/en/body/european_parliament).

documents, while avoiding replying to fictitious requests from shell emails addresses, but it also permits Parliament to ensure the legal certainty as to the date of receipt of Parliament's reply. This date triggers the period for possible actions of redress.

A postal address allows Parliament to notify the reply to the applicant via registered letter with acknowledgment of receipt, thus ensuring legal certainty. Indeed, the Court of Justice has recognised that a registered letter with acknowledgment of receipt is a suitable method of giving notice in as much as it enables the date from which time begins to run to be determined. Furthermore, a decision is duly notified once it has been communicated to the person to whom it is addressed and that person is in a position to take knowledge of it<sup>9</sup>.

For the above reasons, it is Parliament's good practice to ask the applicant to provide a postal address whenever a refusal to access documents has to be notified.

This good practice is also in line with the requirements imposed by the data protection regulation, as recognised by the European Data Protection Supervisor in his decision of 11 July 2014, following a complaint raising the issue of allegedly unnecessary information requested by the Commission in the context of a request for access to documents.

### **C) Complex applications and good administration: the case of requests for documents related to public procurement procedures**

Another trend that deserves to be mentioned is the increased number of complex and large applications for access to documents submitted to Parliament, like those concerning entire files relating to public procurement procedures. Contrary to some national laws, Regulation (EC) 1049/2001 does not contain any provision on unfair, abusive or clearly unreasonable applications. In the event of insufficiently precise requests, or of applications related to a very long document or to a very large number of documents, the only options open to the institution are respectively: a) an invitation to the applicant to clarify the application (Article 6(2) of Regulation (EC) 1049/2001), and b) the possibility to confer informally with the applicant to find a fair solution (Article 6(3) of Regulation (EC) 1049/2001). In exceptional cases, the institution can also extend the original statutory deadline for reply for a further 15 working days. However, these possibilities have not always proved to be adequate.

Complex applications may result in an excessive administrative burden for the institution, as their handling often requires in-depth research work to identify the requested documents, detailed analysis of very long technical documents, the involvement of several Parliament's services or the consultation of third parties.

The Court of Justice has recently reconfirmed 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. In those particular cases, the institutions could safeguard the interests of good administration<sup>10</sup>.

In 2014, Parliament dealt with major applications for access to documents related to public procurement procedures under the Financial Regulation.

Very often, unsuccessful, but also successful, tenderers introduce requests, on the basis of Regulation (EC) No 1049/2001, for documents and information related to the public procurement procedures they have participated in, trying to circumvent the restrictions imposed by the Financial Regulation (FR) and its Rules of Application (RAP), aimed at the equal treatment of all participants. This was the case, for instance, of an application, involving about 10 000 documents,

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<sup>9</sup> Case 42/85, Cockerill – Sambre v Commission [1985] ECR 3749.

<sup>10</sup> Case T-14/98, Hautala v Council, para. 86; Case C-127/13 P, Strack v Commission, EU:C:2014:2250, para. 27.

submitted by one of the successful tenderers of an IT framework contract covering the years 2009-2014.

Applications of this nature, coming from the business sector and often justified on the basis of the applicant's private commercial interests, not only confront Parliament with a disproportionate workload, but also seem to move away from the original function of Regulation (EC) No 1049/2001 to enable citizens to participate more closely in the decision-making process and to guarantee that the administration enjoys greater legitimacy and is more effective and accountable to the citizens in a democratic system.

#### **D) Inter-institutional cooperation**

Parliament has reinforced its cooperation at administrative level with both the Council and Commission to find common solutions for horizontal issues linked to public access to documents.

The three institutions consult each other systematically in the event of an application for access to a document originating in one of the other institutions. To establish a swift consultation mechanism, a Memorandum of Understanding had been concluded in 2002, signed by the representatives of the three Secretaries-General.

In this context, Parliament was consulted eight times by the Commission and two times by the Council in 2014, mainly on pleadings prepared by Parliament's Legal Service and trilogue notes.

Additionally, Parliament was consulted in two occasions by authorities of the Member States on Parliament's documents in their possession.

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## CHAPTER III

### *The Ombudsman's decisions concerning complaints against the Parliament*

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#### **A) New complaint**

In 2014, a complaint was lodged with the Ombudsman against Parliament (1257/2014/KM) following a request for access to documents related to a parliamentary petition. The complainant submitted four allegations: one related to the protection of personal data and three concerning procedural aspects. Before deciding on the admissibility of the complainant's three procedural allegations, the Ombudsman suggested a rapid solution to Parliament, in order to accommodate the complainant's claim on the protection of personal data. As requested by the Ombudsman, on 25 September 2014, Parliament provided an additional reply to the complainant and informed the office of the Ombudsman accordingly. At present, Parliament is waiting for the Ombudsman to proceed with the remaining three allegations.

#### **B) Recommendation**

On 31 March 2014, the Ombudsman made a draft recommendation in the inquiry into complaint 262/2012/OV, concerning registration and availability of minutes of committee coordinators' meetings on the website of the Parliament's public register.

In its draft recommendation, the Ombudsman advised Parliament to include references to existing committee coordinators' minutes in its public register of documents, so to make them directly accessible, in accordance with Article 12 of Regulation (EC) No 1049/2001.

On 27 June 2014, Parliament informed the Ombudsman about a harmonisation of its practice concerning coordinators' minutes. As of the beginning of the 8th legislative term, separate coordinators' minutes are no longer prepared. Instead, recommendations or decisions adopted by coordinators will be included in the respective committees' public minutes, once endorsed by the relevant committee.

Against this background, in October 2014, the Ombudsman closed the inquiry into the complaint, considering that Parliament had taken appropriate measures. However, the Ombudsman accompanied her decision with a further remark advising the Parliament to also include in its public register of documents existing coordinators' minutes, drafted during the 2009-2014 parliamentary term.

In order to implement the Ombudsman's further remark, a new subheading "coordinators" has been created under the heading "committee documents" in the public register of Parliament's documents. The upload of the existing coordinators minutes adopted during the past legislative term is in progress.

### ***Final Remarks***

The public register of Parliament's documents has become an important search tool enabling citizens to participate more closely and actively in Parliament's democratic system. Active transparency as regards Parliament's role as decision-maker has been further boosted and the number of documents made directly accessible is constantly growing.

Parliament's proactive information and documentation policy has permitted it to enhance the quantity and quality of information disseminated to the general public through its internet presence.

Despite the fact that, as a consequence of Parliament's proactive transparency policy, the overall number of applications for access to documents has decreased, a growing complexity of applications may be observed, often coming from the business sector and justified by the applicant's private commercial interests. This emerging trend not only confronts Parliament with a sometimes disproportionate burden, but also it seems to move away from the original function of Regulation (EC) No 1049/2001 to enable citizens to participate more closely in the decision-making process and guarantee that the administration enjoys greater legitimacy and is more effective and accountable to the citizens in a democratic system.