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 that Regulation, each institution is to 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.


ON METHODOLOGY

Parliament’s 2019 annual report is prepared along the following methodology:

– Figures on consulted and requested documents refer to specified documents only;
– Partial access decisions are counted as 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.
INDEX

Executive Summary ................................................................. 4

CHAPTER I Applications for access to documents pursuant to Regulation (EC) No 1049/2001 in 2019 ........................................ 5
  A) The Parliament’s public register of documents .................................. 5
  B) Consulted and requested documents .................................................. 6
     B.1) Directly consulted documents ..................................................... 6
  C) Figures on applications .................................................................. 7
  D) Applicants’ profiles ......................................................................... 10

CHAPTER II Trends and specific issues ................................. 12
  A) Applications concerning the elections to the European Parliament .......... 12
  B) The wide definition of documents and “complex” applications .................. 12
  C) Online platforms for access to documents and personal data protection .......... 13

CHAPTER III Complaints Lodge with the European Ombudsman and Court cases ........................................ 15
  A) Ombudsman .................................................................................. 15
     A.1) Complaints cases closed in 2019 ................................................. 15
     A.2) Complaints cases opened and pending in 2019 ............................... 18
  B) Judicial Review ............................................................................. 18
     B.1) New Cases .............................................................................. 18
     B.2) Pending Court Cases in 2019 ................................................... 18

Final Remarks .............................................................................. 19
Executive Summary

Figures

- By 31 December 2019, the register’s database contained 776,627 references, compared with 748,100 by the end of last year.
- In 2019, the users of Parliament’s public register website consulted 67,029 documents directly through the register. During the same period, Parliament received, via the online application form, e-mail or letter, 645 applications, an increase of 30% compared to 2018.
- Out of the 645 applications, 101 involved documents not previously disclosed to the public.
- The overall positive response rate exceeded 93% in 2019.
- Parliament refused access in 44 cases, mainly in connection with applications for administrative documents and documents related to Members of the European Parliament and to its governing bodies.
- In 13 instances, Parliament provided partial access to the requested documents.

Trends

- Applicants showed a strong interest in documents relating to the Elections to the European Parliament taking place in May 2019. Also, there was a rise of applications submitted through online platforms, such as AsktheEU.org and FragDenStaat.de.
- With fifteen confirmatory applications in the course of the year, the confirmatory application rate increased slightly compared to 2018.
CHAPTER I
Applications for access to documents pursuant to Regulation (EC) No 1049/2001 in 2019

The figures and statistics discussed in this section allow for the identification of trends in the field of public access to documents. They also give to the public a broad picture of Parliament’s implementation of Regulation (EC) No 1049/2001.

A) The Parliament’s public register of documents

The Parliament’s public register of documents 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. It gathers references to directly accessible documents, mostly legislative documents, and, where possible, other categories of documents. It also hosts a portal for the submission of applications for public access to the documents that are not directly accessible.

The register’s website was revamped to make it more user-friendly. The layout was aligned to the new Parliament’s website guidelines, the website was fitted with a new search engine and more visibility was given to its privacy statement. This latter was adapted with the entry into force of Regulation (EU) 2018/17251 on the protection of natural persons with regard to the processing personal data by the Union institutions.

With an increase of almost 4% compared to the previous year, by 31 December 2019, the number of document references in the register’s database reached 776 627 (representing 4 921 950 documents, 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.

---

**Evolution of the Parliament’s public register of documents**

![Graph showing the evolution of Parliament's public register of documents](image)

**B) Consulted and requested documents**

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

**B.1) Directly consulted documents**

67 029 documents were directly consulted on Parliament's public register website in 2019. It is worth noting that this 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 follow the pattern of previous years: parliamentary questions for written answer pursuant to Rule 138 of the Rules of Procedure (10%), answers to parliamentary questions (19%), documents received from the European Commission (4%) and minutes (4%).

---

2 These figures refer to specified documents only.
C) Figures on applications

In 2019, Parliament received 645 applications through the online application portal, by e-mail or letter. 446 of those concerned specified documents, while 199 concerned an indefinite number of documents. Under the Memorandum of Understanding, Parliament consulted other institutions with regard to 14 of the 645 applications and was consulted by other institutions with regard to 8 applications that they had received.

About 30% of all applications received over the year sought public access to either "all documents related to" a particular topic or "all documents containing information on" a particular theme. The processing of these applications is usually more time-consuming.

Out of the 645 applications received in 2019, Parliament responded positively in 601 instances. This figure includes 13 cases in which access to the requested documents was partially granted. This exceeds 93% of positive replies.

---

4 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.
101 out of the 645 applications involved documents not previously disclosed to the public. Those 101 applications entailed disclosing 577 such documents, representing a 48% increase compared to 2018.

Most applications for previously undisclosed documents concerned trilogue negotiations (30%), administrative documents (20%) and documents related to Member’s activities (18%).

(Fig. 3) Number of applications and positive replies

(Fig. 4) Number of applications for not previously disclosed documents and positive replies
In 2019, the Secretary-General took 57 decisions in accordance with Article 12(3) of the Bureau Decision on rules governing public access to European Parliament documents\(^5\), whereby access had to be refused and partial access granted, respectively, in 44 and 13 instances.

The 57 decisions concerned a wide variety of topics and documents. Out of the 44 refusal decisions, 14 concerned, at least partially, documents which were not held by Parliament within the meaning of Article 2(3) of Regulation (EC) 1049/2001. Documents of Parliament’s governing bodies were concerned by nine cases and financial interest declarations or expenses of Members of the European Parliament by eight cases. Access to public procurement documents was refused in five instances. Five of the 13 partial access decisions concerned some documents from the governing bodies of the institution. Administrative documents and legal opinions were each concerned in three instances.

There were 14 confirmatory applications\(^6\). In every case, the Institution confirmed its initial position.

The refusals, which sometimes relied on several exceptions, were mainly based on the need to protect the privacy and the integrity of individuals (Article 4(1)(b) of Regulation (EC) No 1049/2001), the decision-making process of the institution (Article 4(3) of Regulation (EC) No 1049/2001), commercial interests of a natural or legal person (first indent of Article 4(2) of Regulation (EC) No 1049/2001) and the protection of legal advice (second indent of Article 4(2) of Regulation (EC) No 1049/2001).

\((\text{Fig. 5})\) **Use of exceptions under Article 4 of Regulation (EC) No 1049/2001**

<table>
<thead>
<tr>
<th></th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Par. 3 Decision-making process</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Par. 2 Audits</td>
<td>9</td>
<td>16</td>
</tr>
<tr>
<td>Par. 2 Commercial interests</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Par. 1(b) Privacy</td>
<td>4</td>
<td>9</td>
</tr>
<tr>
<td>Par. 1(a) Public interest</td>
<td>11</td>
<td>17</td>
</tr>
</tbody>
</table>

In conclusion, Parliament’s overall positive response rate remained very high, at more than 93%.


\(^6\) Confirmatory applications can be made in relation to total or partial refusals asking the institution to reconsider its position (Article 7(2) of Regulation (EC) No 1049/2001).
D) Applicants' profiles

Academics and researchers still represent the largest share of applicants with over 25% of applicants pertaining to this category, followed by the business sector, environmental organisations and other interest representatives, accounting together for around 12% of applications. Journalists account for only 5% of applicants in 2019.

(Fig. 6) Known profiles of applicants for public access to documents in 2019

The geographical distribution of applications among the Member States, as far as Parliament was made aware of it, changed slightly. Around 24% of applications originated in Germany, followed by Spain (10%), France (9%), Belgium/Italy (7% each) and United Kingdom (5%). The number of applications from third countries accounted for approximately 7% of the total.

---

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.
English remained the language most frequently used for applications (52%), followed by German (21%), French (11%) and Spanish (5%).
CHAPTER II
Trends and specific issues

The year 2019 was marked by a significant number of applications for public access to documents related to the elections to the European Parliament that took place in May. There was also a rise of applications submitted through online platforms. Those platforms facilitate the submission of applications and, by providing templates, increase the likelihood of a high number of documents being covered by the request.

A) Applications concerning the elections to the European Parliament

Elections to the European Parliament are held every five years – in 2019, from 23 to 26 May – and normally bring about an increased interest by the public in the European Parliament, in particular in its activities related to the election themselves. This fact was reflected also in the applications for public access to documents. Notably, applicants sought access to documents related to the Parliament election campaign “This time I’m voting”, launched to raise democratic awareness and encourage Europeans to vote. Shortly after the elections, documents concerning the notifications of official results and the number of votes received by each political party were frequently requested.

B) The wide definition of documents and “complex” applications

Regulation (EC) No 1049/2001, according to Article 2(3) thereof, only applies to documents held by an institution, that is to say, documents drawn up or received by it and in its possession. However, according to point (a) of Article 3 of that Regulation, a document means any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution’s sphere of responsibility. In addition to that, as held by the Court of Justice of the European Union (‘the Court’) in settled case-law, all information which can be extracted from an electronic database by general use through pre-programmed search tools must be regarded as an existing document.

With Regulation (EC) No 1049/2001 providing for such a broad definition of documents and no limitative boundaries to what applicants may request, Parliament is faced with a wide variety of applications. A good share of applicants do not request public access to specific and referenced documents but request access to content. The handling of this kind of applications may sometimes be more complex and resource-intensive. In order to process applications for content, before assessing whether the requested content shall be disclosed or not, Parliament often needs to establish whether, or to what extent, the requested content is actually held as a document by the institution. This process often requires the involvement of several branches of the administration and a fine consideration of the rules as interpreted by the Court.
B.1) Applications for public access to generic content and online platforms

Parliament receives an increasing share of applications for access to generic content, typically formulated as requests for access to all the documents containing information on a certain topic. This is due in part to the growing popularity of online platforms designed to facilitate the process of acquiring public access to documents, and which provide a template for access requests to generic documents on a certain topic to be sent by the applicant. These templates increase the likelihood of a high number of documents being covered by the request.

Dealing with a request for generic content often requires Parliament to carry out extensive internal consultation to determine what relevant documents are held by the institution, and also to contact the applicant in accordance with Article 6(2) of Regulation (EC) No 1049/2001 in order to clarify the request and assist him or her in doing so.

In addition, the growing use of broad formulations in applications such as requesting all documents containing various information increases the likelihood that applicants will at least partially request access to information not contained in an existing document, and, ultimately, request access to information rather than to a document. In this respect, when processing applications submitted under Regulation (EC) 1049/2001, Parliament needs to make an essential distinction. As confirmed by the Court, it is necessary, for the purposes of applying Regulation (EC) No. 1049/2001, to maintain a distinction between the concept of a document and that of information. While Regulation (EC) No 1049/2001 provides for public access to the Parliament’s documents, it does not bind the institution to provide applicants with every information they would be interested in. However, it is sometimes difficult to draw a clear line between the two concepts.

B.2) Access to documents that are not held by Parliament (example of screenshots)

When dealing with applications for public access to content, as opposed to referenced documents, Parliament needs to assess whether it actually holds the requested content. The task is sometimes not so straightforward.

As a case in point, in 2019 Parliament received several applications referencing Regulation (EC) No 1049/2001 and requesting screenshots of Twitter analytics on Parliament’s Twitter accounts. In order to address them, Parliament needed to assess what the requested analytics were and whether it held any within the meaning of Regulation (EC) No 1049/2001.

In that instance it was established that the requested analytics would have to be produced from a database which belonged to Twitter and which the institution did not hold, despite having the possibility of visually accessing it on the screen. As a consequence, the institution refused access to the analytics in part on the ground that the requested information was not stored as a document within the meaning of point (a) of Article 3 or otherwise held by Parliament within the meaning of Article 2(3) of Regulation (EC) No 1049/2001.
C) Online platforms for access to documents and personal data protection

As noted above, applicants increasingly resort to online platforms to submit applications for public access to documents. When using those platforms they enjoy a higher degree of anonymity vis-à-vis the institutions since their private email addresses are not visible to those institutions. Instead, the application is sent from an email specifically generated for each individual application. However, all applications submitted through such platforms as well as all the respective communication and responses sent by Parliament are automatically published on their websites.

In that regard, in order to ensure the protection of the applicant’s personal data that may have to be communicated, Parliament initially sends the applicant an acknowledgement of receipt in which it informs him or her that the website is not affiliated with Parliament and advises him or her against revealing any personal data through the use of the website, but rather, if appropriate, to contact Parliament directly. This is particularly relevant when Parliament asks for a postal address in order to notify a decision to the applicant.
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 can be 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 cases dealt with by the Ombudsman in 2019 and a pending case following an appeal to the Court of Justice against an Order by the General Court.

A) Ombudsman

A.1) Complaints cases closed in 2019

- Complaint 1651/2018
Parliament refused public access to documents relating to the preliminary deliberations of a Bureau Working Group on the revision of the list of expenses that may be covered by the General Expenditure Allowance (GEA), on the grounds that it would seriously undermine Parliament’s decision-making process, as provided for in Article 4(3) of Regulation (EC) No 1049/2001.

The Ombudsman recommended that the documents concerned be disclosed due to an overriding public interest. The President informed the Ombudsman that Parliament disagreed with the assessment, in the light of settled case-law.

- Complaint 2089/2018
This complaint concerned an application for public access to an overview of business trips taken by Members of the European Parliament. Regulation (EC) No 1049/2001 only applies to existing documents, that is to say, to documents drawn up or received by an Institution and in its possession, and does not require an institution to collect and collate data so as to provide an applicant with information he or she would like to have access to. In this regard, Parliament determined that it did not hold the documents requested by the applicant.

After meeting with the services involved, the Ombudsman agreed with Parliament’s assessment and found no maladministration.

- Complaint 149/2019
Parliament refused public access to documents showing the expenses and allowances received by Irish Members of the European Parliament, on the grounds that it would undermine the protection of privacy and integrity of the individual, in particular in accordance with Union legislation regarding the protection of personal data, as provided for in point (b) of Article 4(1) of Regulation (EC) No 1049/2001. The applicant failed to establish the necessity, for a specific purpose in the public interest, for the transmission of the personal data contained in the requested documents, as required by point (b) of Article
The Ombudsman concurred with Parliament’s assessment regarding both elements of the complaint and found no maladministration.

- Complaint 595/2019
Parliament received an application for public access to three documents relating to a South Africa-EU Inter-Parliamentary meeting. It provided full access to two documents and partial access to a third document, on the grounds that its full disclosure would undermine the protection of the public interest as regards international relations, as provided for in point (a) of Article 4(1) of Regulation (EC) No 1049/2001. The applicant made a complaint against Parliament’s decision to grant partial access, also arguing against an alleged wrongful extension of the deadlines, both at the initial and confirmatory stage.

The Ombudsman inspected the document concerned and was satisfied by Parliament’s arguments concerning partial access. The Ombudsman also concluded that the reasons provided to the applicant as regards the extension of the deadline – namely, ongoing internal consultations with the Legal Service and the need for the decision to be translated – had been sufficiently detailed and reasonable.

- Complaint 648/2019
Parliament refused public access to a legal opinion concerning the contractual situation of language teachers working in Parliament, on the grounds that it would undermine the protection of court proceedings and legal advice, as provided for in Article 4(2) of Regulation (EC) No 1049/2001. The applicant, however, claimed that there was an overriding public interest in disclosure of the requested document.

Parliament disagreed with the applicant’s view, indicating that the disclosure could hinder its ability to receive frank, objective and comprehensive legal opinions in the future and carried a probable risk of undermining its ability to defend itself in court.

The Ombudsman reviewed the requested document and, satisfied by Parliament’s arguments, came to the conclusion that there was no overriding public interest in its disclosure and, therefore, no maladministration.

- Complaint 1150/2019
The complaint was brought against Parliament’s decision to provide only partial access to a legal opinion concerning Parliament’s composition for the 2019-2024 period in case the United Kingdom had not formally withdrawn from the Union by the time of the European elections, on the grounds that full disclosure would undermine the protection of legal advice, as provided for in Article 4(2) of Regulation (EC) No 1049/2001. Parliament emphasised that in the context of an unprecedented and highly complex legal and political matter, disclosing the concerned document in full would affect the ability of Parliament to seek similar advice on other sensitive issues in the ongoing procedures relating to Brexit. Parliament also considered that no overriding public interest had been demonstrated.
The Ombudsman concluded that given the highly sensitive subject matter of the document and the circumstances prevailing at the time of the application being submitted and of partial access being granted, Parliament was justified in refusing to disclose the full document. The Ombudsman therefore found no maladministration.

- Complaint 1399/2019

Parliament received an application for public access to documents concerning the mission of the Parliament’s Committee on budgetary control (CONT) to Albania, in particular related to the use of EU funds in Albania and CONT’s assessment of such use. Parliament identified the report on the fact-finding mission of CONT as the only document relevant to his application. Since the applicant insisted that other documents be identified and disclosed, Parliament responded by indicating that it held no other relevant document.

The Ombudsman noted that Parliament provided a reasonable explanation as to why the document did not exist, while acknowledging the presumption of legality and veracity, recognised by the settled case-law, attached to a statement by a Union institution that a document does not exist. Such a presumption is rebuttable where the applicant provides relevant and consistent evidence that the document exists, which the applicant did not provide in this case. The Ombudsman found no maladministration.

- Complaint 1409/2019

Parliament refused public access to a very high number of documents – requested by 34 emails sent over 11 days – related to 13 specific committee missions as well as missions by Members of the European Parliament to 112 countries. Due to the large number of documents that would need to be revised for personal data considerations, Parliament endeavoured to find a fair solution with the applicant, in accordance with Article 6(3) of Regulation (EC) No 1049/2001. However, the applicant did not agree with Parliament’s proposal. Parliament therefore considered that the handling of the requests would have constituted an excessive administrative burden.

The Ombudsman agreed with Parliament’s assessment that revising the documents, in particular as regards personal data, would indeed be disproportionate and therefore concluded that there was no maladministration.
A.2) Complaints cases opened and pending in 2019

- Complaint 1498/2019

The complaint concerned Parliament best practice to notify its decisions concerning public access to documents to the applicants by registered mail with acknowledgement of receipt, for the purposes of ensuring legal certainty, also with a view to respecting the statutory deadlines for submitting a confirmatory application and subsequent legal redress. In this particular case, the applicant requested that the decision be also sent to him electronically, via the platform FragDenStaat.de, which he used to make the application. However, Parliament declined to do so in order to comply with Regulation (EU) 2018/1725 since such a decision would be have been automatically published online, including personal data contained in the decision.

Parliament submitted its observation to the Ombudsman, whose decision is still pending.

B) Judicial Review

B.1) New Cases

Parliament’s decisions on access to documents are relatively seldom challenged. No action in annulment was lodged with the Court of Justice in 2019.

B.2) Pending Court Cases in 2019

Case T-421/17 (Appeal Case C-761/18 P), Leino-Sandberg v Parliament

In July 2017, an action for annulment was filed against Parliament’s decision to refuse public access to a Parliament decision of 8 July 2015 on the grounds that this latter decision was being challenged before the Court, in case T-540/15 - De Capitani v Parliament, and that its disclosure would have undermined those court proceedings.

In 2018, the General Court ruled that since the applicant had eventually received access to the document she sought access to, the action became devoid of purpose and the applicant therefore no longer had an interest in the adjudication of the case.

The applicant brought an appeal against that Order before the Court of Justice asserting errors of law therein, in so far that it held that there was no longer a purpose to the action and that there was no longer an interest in bringing proceedings. The Appeal Case is still pending.
As forecast in last year’s report, there was an increased interest of the public in the European elections held from 23 to 26 May 2019, and in particular in Parliament’s election campaign “This time I’m voting” and its presence on social media. There was also a rise in applications seeking access to an indefinite number of documents, in particular through online platforms. Those kinds of applications pose a challenge of replying thoroughly to the applicant within the relatively short time limits provided for by Regulation (EC) No 1049/2001.

One can also observe from the processing of applications for public access to documents a certain tension between Regulation (EC) No 1049/2001, which aims to ensure a high level of transparency in the institutions and Regulation (EU) 2018/1725 which protects any personal data that the institutions hold by strictly regulating their processing as well as possible transmissions of those data to third parties. Every time it handles an application for public access to documents containing personal data, Parliament’s administration needs to strike the right balance between both regulations and their objectives. The years ahead will continue to shape that balance.