Public Access to Documents 2020

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 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 2020 annual report is prepared along the following methodology:

- Figures on 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.
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European Parliament’s Annual Report on Public Access to Documents - 2020
(Article 17 of Regulation (EC) No 1049/2001)

Executive Summary

Figures

- By 31 December 2020, the register’s database contained 820,061 references, compared with 776,627 by the end of last year.
- In 2020, Parliament’s public register website was consulted by 61,251 different users. During the same period, Parliament received, via the online application form, e-mail or letter, 442 applications, a decrease of 31% compared to 2019.
- Out of the 442 applications, 93 involved a disclosure of documents not previously disclosed to the public.
- The overall positive response rate exceeded 93% in 2020 and thus remained stable compared to 2019.
- Parliament refused access in 29 cases, mainly in connection with applications for administrative documents and documents related to Members of the European Parliament.
- In 10 instances, Parliament provided partial access to the requested documents.
- With eight confirmatory applications in the course of the year, the confirmatory application rate decreased somewhat compared to 2019.

Trends

- Parliament introduced unprecedented working arrangements in order to tackle the consequences of the COVID-19 pandemic.
- Applicants continued to show strong interest in inter-institutional legislative negotiations, with trilogue multicolumn table be the largest category of previously undisclosed documents requested.
CHAPTER I
Applications for access to documents pursuant to Regulation (EC) No 1049/2001 in 2020

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.

With an increase of almost 6% compared to the previous year, by 31 December 2020, the number of document references in the register’s database reached 820 061 (representing 5 264 040 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.

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

Public Register of Documents’ website was visited 65 795 times by 61 251 different users. This figure does not take into consideration visits via other platforms linked to the register’s database, such as parliamentary committees’ platforms and Parliament’s Think Tank webpages.
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.

The Public Register of Documents’ website underwent a number of visual and structural changes to improve accessibility and user-friendliness. In this sense, the website’s graphical design has been updated and its layout will now adapt to a wide range of devices and screen formats. At the same time, coding improvements and a new search engine ensure more meaningful and faster returns to search queries, aided by the display of metadata and highly efficient filters. Finally, a new analytics framework will give insight into how the website is used and allow for appropriate future developments.

B) Figures on applications for public access to documents

In 2020, Parliament received 442 applications through the online application portal, by email or letter. 363 of those applications concerned specified documents, while 79 concerned an indefinite number of documents.

Pursuant to Article 4(4) of Regulation (EC) No 1049/2001, Parliament was consulted by other institutions with regard to 38 applications for access to documents that were issued, at least in part, by Parliament. About a third of those consultations were for trilogue documents. Inversely, Parliament handled 59 applications which required consultation with other institutions as the requested documents were established by or originating, at least in part, in another institution. The vast majority of those applications concerned trilogue documents.

31% 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.

Out of the 442 applications received in 2020, Parliament responded positively in 413 instances. This figure includes 10 cases in which access to the requested documents was partially granted.

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93 out of the 442 applications involved documents not previously disclosed to the public. Those 93 applications entailed disclosing 1173 such documents, representing a 103% increase compared to 2019.

Most of the applications for previously undisclosed documents concerned trilogue negotiations (28%), administrative documents and documents of governing bodies (19%) and documents of committees and delegations (13%).

(Fig. 3) **Number of applications and positive replies**

(Fig. 4) **Number of applications for not previously disclosed documents and positive replies**
With regard to applications registered in 2020, the Secretary-General took 39 decisions in accordance with Article 12(3) of the Bureau Decision on rules governing public access to European Parliament documents\(^2\), thereby refusing access and granting partial access, respectively, in 29 and 10 instances.

The decisions refusing public access or granting partial access concerned a wide variety of topics and documents. In about a quarter of those cases refusal to grant access was triggered by the fact that the correspondent application was seeking access to documents not held by Parliament within the meaning of Article 2(3) of Regulation (EC) 1049/2001. Nine decisions concerned expenses of Members of the European Parliament. Furthermore, administrative documents were concerned by 7 decisions and legal opinions by 4 decisions.

There were 8 confirmatory applications\(^3\). In each case, the institution confirmed its initial position.

The decisions to refuse access or to grant partial access, 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), the purpose of inspections, investigations and audits (third 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).

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

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

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\(^3\) 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).
C) Applicants' self-declared background

Academics and researchers continued to represent the largest share of applicants with over 15% of applicants pertaining to this category, followed by the business sector, environmental organisations and other interest representatives, accounting together for around 5% of applications. Journalists accounted for only 5% of applicants in 2020.

(Fig. 5) Professional background of applicants in 2020

The geographical distribution of applications among the Member States, as far as Parliament was made aware of it, changed slightly. While no mention of the country of residence of the applicant was made in 34% of applications, around 17% of all applications were from applicants who stated being based in Germany, 9% in France, 5% in Spain, another 5% in Italy, and 4% in Belgium. The number of applicants who stated being residents of third countries accounted for approximately 5% of the total. While applicants from the United Kingdom were considered as applicants from a Member State, in conformity with Article 122 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union. Nevertheless, the number and proportion of applications from self-identified UK residents dropped significantly compared to previous years.

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4 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, however, remained the language most frequently used for applications (57%), followed by German (20%), French (9%) and Spanish (5%).
CHAP TER II
Trends and specific issues

A) Adapting to the reality of the COVID-19 pandemic

Despite one of the greatest public health crises in recent times, caused by the COVID-19 pandemic, Parliament has taken measures that have enabled it to continue conducting its essential business, while protecting the health of Members, staff and visitors. In order to mitigate the risk of infection with the COVID-19 virus, and its spread, by Members, staff and anyone else on its premises, Parliament had to introduce specific working arrangements. These included restricting access to Parliament’s buildings and 100% teleworking for most of its staff, except those whose physical presence was indispensable. This required rapid adjustments of Parliament’s IT systems and capability in order to allow for teleworking on a much greater scale than ever before, as well as of working processes that no longer included in-person interaction or physical presence in the office.

Despite the challenges posed by the pandemic, Parliament managed to comply with time-limits applicable in public access to documents procedures. In doing so, it ensured that the right of applicants to obtain public access to the requested documents within the prescribed period was not infringed, even in these exceptional circumstances.

B) Applications for access to trilogue multi-column tables

The public’s interest in interinstitutional legislative negotiations did not abate over the course of the year. In 2020, Parliament received and processed 48 applications for public access to trilogue multicolumn tables, while it was consulted 13 times on such applications received by the Council or the Commission. Applications for trilogue multicolumn tables therefore remain the largest category of previously undisclosed documents requested in 2020.

Trilogue multicolumn tables contain the starting negotiating positions of the Commission, the Council and Parliament in three separate columns as well as compromises provisionally agreed at trilogue meetings in a fourth column, often with comments on the negotiations’ progress. Since trilogue multicolumn tables include content from Parliament, the Council and the Commission, they are jointly authored documents and, in principle, the institution that is handling an application for access to such documents shall consult the other two institutions with a view to determining whether the table can be disclosed or if it or parts thereof need to be refused on the ground of an exception to the right of access.

Those consultations are carried out under 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, and in order to avoid conflicting decisions by the institutions. Nonetheless, that consultation process may present some challenges.
The interest of the public in seeing trilogue multicolumn tables published is relatively high. However, the tables are usually very long documents, often reaching hundreds of pages, and a full case-by-case assessment thereof, as continues to be required under the case-law, may be quite time consuming. As a result, Parliament often needed to extend the time limit to respond to applications for trilogue documents by 15 working days, in accordance with Regulation (EC) No 1049/2001.

Those time limit management challenges could occasionally be compounded by divergent views on disclosure between the institutions and the interest to respect the principle of loyal cooperation, as indeed the Memorandum of Understanding does not specifically provide for a divergence resolution mechanism.

In 2020, after due assessment, Parliament always formed the view that the requested trilogue multicolumn tables could be fully disclosed, sometimes with residual personal data of officials who drafted the tables edited out. In the vast majority of cases, the Council and the Commission concurred with Parliament’s approach.
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 2020 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 2020

- Complaint 1498/2019

The complaint concerned Parliament’s 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 sent to him electronically, via an online platform, 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 have been automatically published online, including personal data contained in the decision.

The Ombudsman concurred with Parliament’s assessment concerning the need for legal certainty and found no maladministration.

- Complaint 63/2020

Parliament refused access to a photo of an MEP which was not held by the Institution, since it had been deleted, shortly after it had been taken, for not meeting editorial and institutional requirements. The applicant considered that Parliament might have deleted the photo only after he had submitted his application.

The Ombudsman took the view that Parliament’s assertion that it did not hold the photo, and was therefore unable to grant access to it, was reasonable and that the applicant failed to rebut the legal presumption of veracity, as confirmed by the Court of Justice, in relation to that assertion. Therefore, no maladministration was found.

- Complaint 684/2020

The complaint concerned a refusal of public access to the Data Protection Impact Assessment (DPIA) related to the software and services developed for the preparatory phase
of the elections to the European Parliament in 2019. Access was refused in order to protect the purpose of inspections, investigations and audits as provided for in the third indent of Article 4(2) of Regulation (EC) No 1049/2001.

At the time when Parliament adopted its decision on the confirmatory application, the European Data Protection Supervisor (EDPS) was still conducting an inspection which focused, inter alia, on the measures adopted by Parliament to address the risks identified in the DPIA. By then, the EDPS had not yet presented the conclusions of his investigation, including validating the measures taken to stop personal data from being processed by third parties. The Ombudsman closed its procedure with the finding that no further inquiries were justified.

On the basis of a new, separate application submitted to Parliament after the EDPS inspection in question had been concluded, Parliament granted partial access to the requested documents, after having redacted personal data and commercially sensitive information, as required by Article 4 of Regulation (EC) No 1049/2001.

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 General Court in 2020.

B.2) Pending Court Cases in 2020

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

In July 2017, a professor of EU law filed an action for annulment of a 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 obtained access, albeit by way of disclosure by a third party, 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.

In January 2021, the Court of Justice set aside the order under appeal and referred the case back to the General Court. Namely, it upheld the ground of appeal whereby the applicant asserted that the action had not become devoid of purpose. The Court of Justice took the view that since the applicant had only obtained access to the document at issue by way of disclosure by a third party and Parliament continued to refuse to grant access to that document, it cannot be considered that the applicant had obtained access to it within the meaning of Regulation (EC) No 1049/2001, nor that, therefore, the applicant no longer had any interest in seeking the annulment of the decision solely as a result of that disclosure.

The case before the General Court is still pending.
Final Remarks

The year 2020 was certainly marked by the consequences of the COVID-19 pandemic and the measures put in place by Parliament to ensure that it could, despite the pandemic, continue carrying out all of its functions and meeting its obligations laid down by law, including Regulation (EC) No 1049/2001. With those carefully thought out measures and the commitment of its staff, Parliament adapted to the new circumstances and successfully met the unexpected challenges. With regard to public access to documents, that meant fully complying with the statutory time-limits for replying to the applicants.