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To:	General Secretariat of the Council
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Subject:	REPORT FROM THE COMMISSION on the application in 2021 of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents

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Delegations will find attached document COM(2022) 498 final.

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Encl.: COM(2022) 498 final



Brussels, 3.10.2022  
COM(2022) 498 final

## **REPORT FROM THE COMMISSION**

**on the application in 2021 of Regulation (EC) No 1049/2001 regarding public access to  
European Parliament, Council and Commission documents**

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## 1. INTRODUCTION

The present annual report, drafted in accordance with Article 17(1) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (hereafter ‘Regulation (EC) No 1049/2001’), covers the implementation by the European Commission in the year 2021 and is based on statistical data, which are summarised in Annex<sup>1</sup>. It also refers to findings of the European Ombudsman concerning the European Commission's implementation of the Regulation and the rulings handed down by the EU Courts.

The year 2021 was another one in which the European Commission continued to exercise its transparency obligations in the shadow of the COVID-19 pandemic, but also in the light of the recovery ambitions embodied in the NextGenerationEU. This context influenced the number and nature of the specific requests submitted under the Regulation.

The statistics reflect the number of applications received and replies provided in 2021<sup>2</sup>. They further provide more accurate data as regards the statistics retrieved for the previous years, following subsequent regular encoding corrections<sup>3</sup>.

The statistics show that the requested documents were fully or partially disclosed in almost 74% of the 8,280 cases at the initial stage, and wider or even full access was granted in 38% of the 247 cases reviewed at the confirmatory stage. The data not only confirm the openness of the European Commission, but also the commitment of the institution to the right of access to documents as part of its overall transparency policy.

In the European Commission, the treatment of initial access to documents requests is handled on a decentralised basis by the various Commission Directorates-General and services. Each Directorate-General and service appoints at least one legal expert for this task, acting as ‘access to documents coordinator’. Depending on the size of the service and the number of requests received, these coordinators are usually assisted by support staff and are entrusted with the coordination of the draft replies with the units in charge of the underlying policy areas.

Confirmatory requests are dealt with by a specific team within the Secretariat-General’s Unit for *Transparency, Document Management and Access to Documents*, so as to ensure an independent administrative review of the reply given at the initial stage. In addition, the Unit provides horizontal guidance, training and advice to all Directorates-General and services of the European Commission on the implementation of the Regulation, in close cooperation with

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<sup>1</sup> Unless otherwise indicated, the statistics presented in this Report are based on figures extracted from the European Commission IT applications on 31 December 2021, as updated following subsequent encoding corrections. Percentages in the narrative part of the Report are rounded to the closest decimal.

<sup>2</sup> However, the statistics do not reflect the number of documents requested or (partially) disclosed which were far more numerous because individual applications may concern several documents or even to entire files concerning a specific subject or procedure.

<sup>3</sup> For this reason, the figures provided in this report and the previous ones may slightly differ.

the Legal Service, ensuring the coordination and uniform implementation of the detailed rules for the application of Regulation (EC) No 1049/2001.

This Unit also manages Gestdem – the European Commission-wide IT system for handling initial and confirmatory requests for access to documents. In parallel, during 2021, the European Commission continued to develop its future system for handling access requests through an electronic online portal, namely ‘Electronic Access to European Commission Documents’ (or ‘EASE’). The first version of EASE will go live in 2022 and will provide:

- (1).a new online portal allowing the citizens to (i) submit and have an overview of their applications for access to Commission documents, (ii) communicate with the Commission as well as (iii) search for previously disclosed documents; and
- (2).a new case-management system allowing the Commission staff to register, attribute and handle the applications for access to documents. It will replace Gestdem, the current IT system used for this purpose.

The Commission services are supported by the Historical Archives Service (HAS) with regard to archives of all previous Commissioners and Cabinets. In relation to access to documents applications, in 2021, HAS provided its assistance to the Commission services in 175 cases<sup>4</sup>, mostly to the Secretariat-General (22) and the Directorates-General for Climate Action (19), Research and Innovation (18), Trade (14), Energy (11) and Health and Food Safety (8).

## **2. MAKING INFORMATION AND DOCUMENTS AVAILABLE THROUGH REGISTERS AND INTERNET SITES**

The Commission publishes a wide variety of legal, policy, administrative and other documents on different websites and registers. Many are available on the Register of Commission Documents, Register of Delegated Acts and other corporate registers managed by the Secretariat-General, while others can be found on websites managed by Directorates-General or EUR-Lex.

The updated version of the Register of Commission Documents (hereafter ‘RegDoc’) became operational on 17 May 2021. It features new search functionalities, improved user interface and improved presentation of documents. As of 2022, new document types will start being published on RegDoc<sup>5</sup>. Thanks to its improved IT architecture, RegDoc can be integrated with certain other registers<sup>6</sup> managed by the Secretariat-General of the European Commission. This is the next phase of the project. Thanks to such integrations, documents published on other Secretariat-General registers will be available also via RegDoc.

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<sup>4</sup> Compared to 260 in 2020.

<sup>5</sup> For example, Commission and High Representative Joint Acts (so called ‘JOIN’ acts).

<sup>6</sup> The first on the list is [Comitology Register](#).

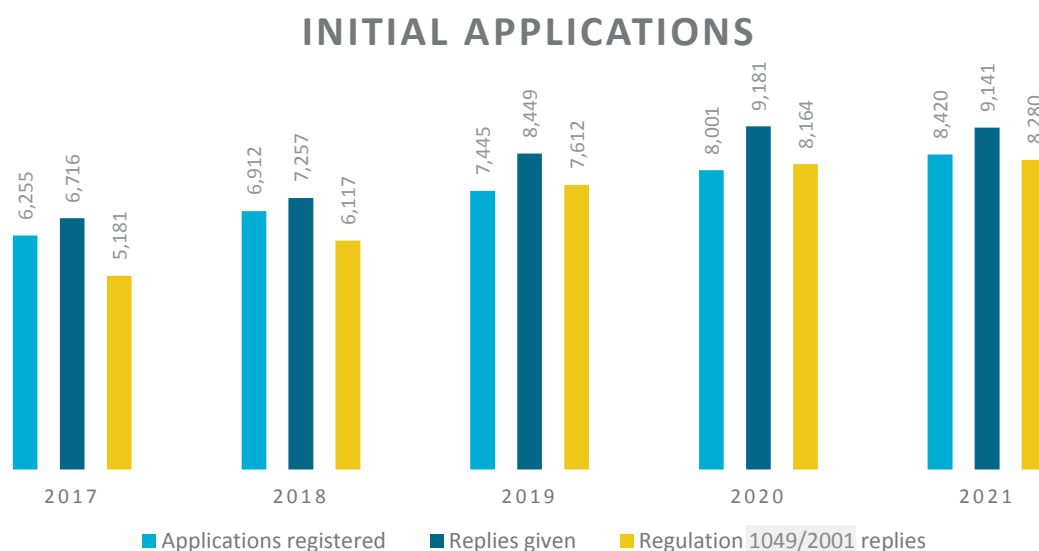
In 2021, 15,009 new documents were added to RegDoc (see Annex – Table 1), falling within the following categories: C, COM, JOIN, OJ, PV, SEC or SWD<sup>7</sup>.

In 2021, the number of visitors of the ‘Access to Documents’ website on *Europa*<sup>8</sup> reached 15,222 compared to 14,716 in the previous year. Similarly, the number of pages viewed increased by over 37%, with 33,508 pages viewed (see Annex – Table 2)<sup>9</sup>.

### 3. ANALYSIS OF THE APPLICATIONS FOR ACCESS TO DOCUMENTS

#### 3.1. The number of applications (Annex – Tables 3 and 4)

As illustrated by the graph below, in 2021, the number of initial applications reached 8,420. This figure reflects an increase of 5.2% in comparison with 2020. The European Commission provided 8,280 replies under Regulation (EC) No 1049/2001 and 9,141 replies in total<sup>10</sup>.



As regards confirmatory applications requesting a review by the European Commission of initial replies fully or partially refusing access, their number reached 355 in 2021, which reflects a striking increase of almost 16.4% in comparison with 2020.

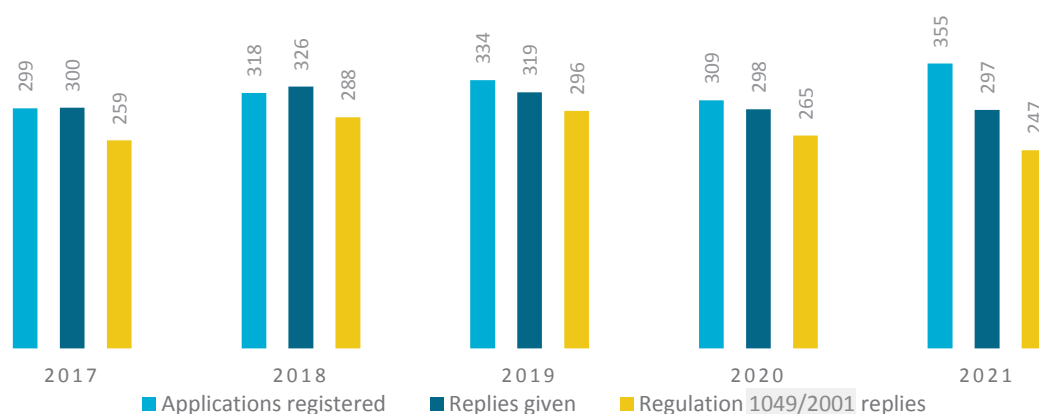
<sup>7</sup> Namely, C: Autonomous acts of the Commission; COM: Commission legislative proposals and other documents communicated to other institutions, with their preparatory papers; JOIN: Commission and High Representative Joint Acts; OJ: Agendas of Commission meetings; PV: Minutes of Commission meetings; SEC: Commission documents that cannot be classified in any of the other series; SWD: Commission staff working documents.

<sup>8</sup> Access to documents: [http://ec.europa.eu/transparency/access\\_documents/index\\_en.htm](http://ec.europa.eu/transparency/access_documents/index_en.htm).

<sup>9</sup> Those data result from the use since 2018 of a new algorithm, which provides more accurate statistics. Therefore, they are not comparable to the ones retrieved for the years prior to 2018.

<sup>10</sup> The number of replies, as extracted from the database, encompasses all types of follow-up provided by the European Commission, extending from replies provided under Regulation (EC) No 1049/2001 (including where no documents are held) to responses provided under different legal frameworks (due to the contents of the application or status of the applicant, etc.) or even closures following the applicants’ failure to provide requested clarifications or to fulfil procedural requirements.

## CONFIRMATORY APPLICATIONS

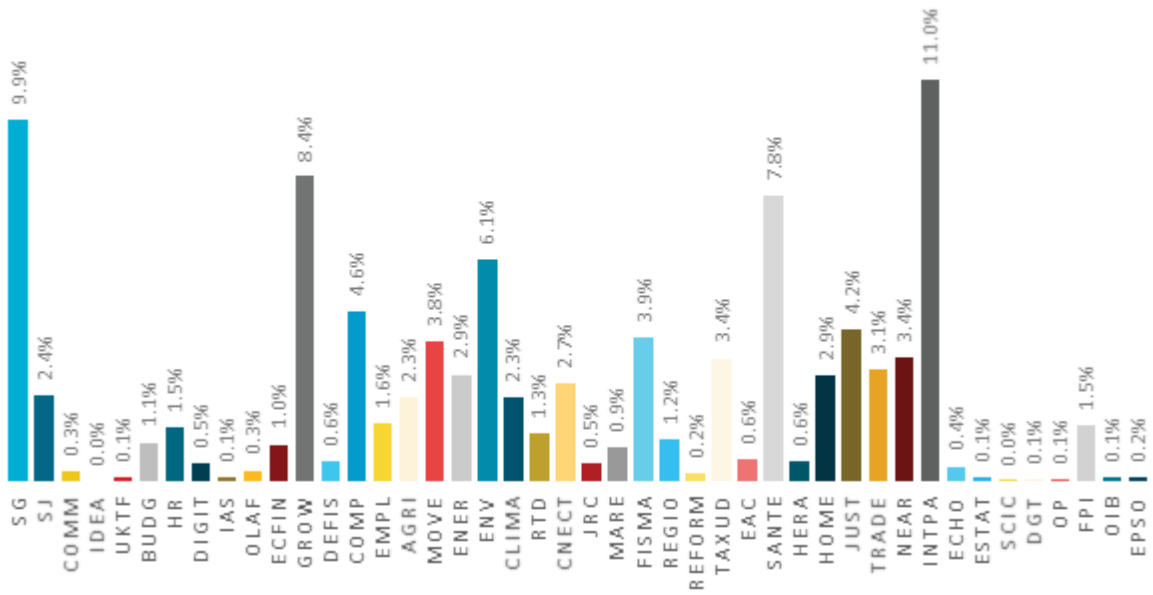


### 3.2. Proportion of applications per European Commission Directorate-General/Service (Annex – Table 5)<sup>11</sup>

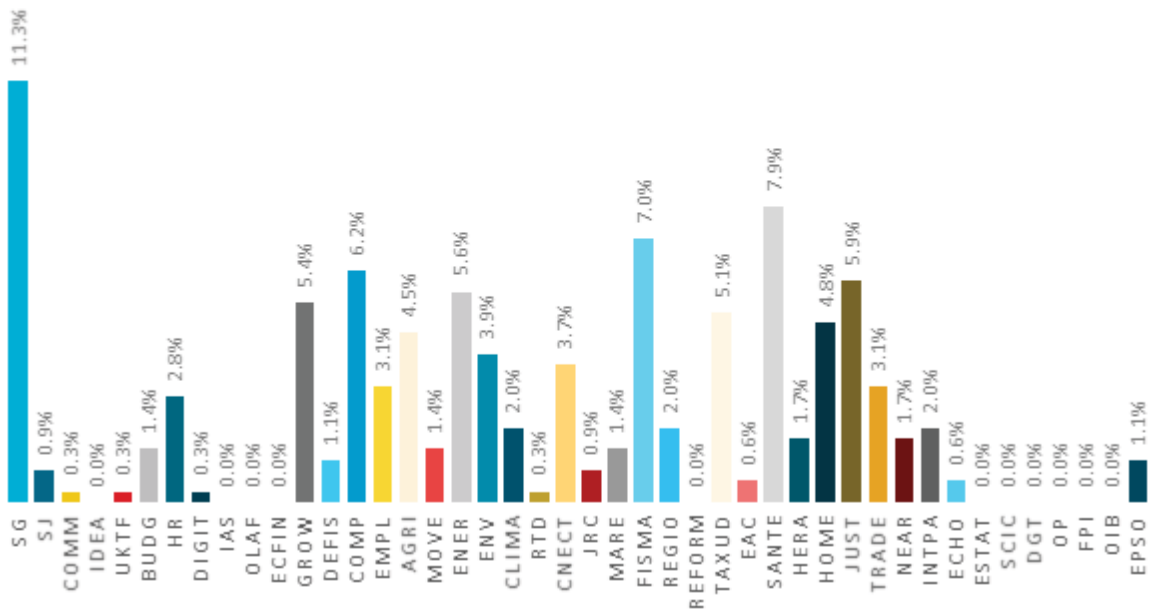
In 2021, the Directorate-General for International Partnerships received the highest proportion of initial applications (11%). It was followed by the Secretariat-General (9.9%), the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (8.4%), the Directorate-General for Health and Food Safety (7.8%), and the Directorate-General for Environment (6.1%). The remaining European Commission departments and services each accounted for less than 5% of all initial applications. The figures of the Secretariat-General and the Directorate-General for Health and Food Safety reflect the interest of the applicants in COVID-19-related matters, such as vaccines and NextGenerationEU.

<sup>11</sup> The data pertaining to the European Anti-Fraud Office ('OLAF') indicated below concern exclusively applications for access to documents related to its administrative activities, which are recorded in GestDem. Applications for access to documents concerning its investigative activities, due to the particular sensitivity of the latter, are subject to a specific procedure in accordance with Article 3(3) and Article 4 of the Detailed rules for application of Regulation (EC) No 1049/2001. Moreover, as regards the European External Action Service ('EEAS'), it should be stressed that only documents of the Service for Foreign Policy Instruments are retained with the European Commission. Therefore, the data pertaining to European External Action Service in this report concern only applications for access to such documents.

## INITIAL APPLICATIONS 2021



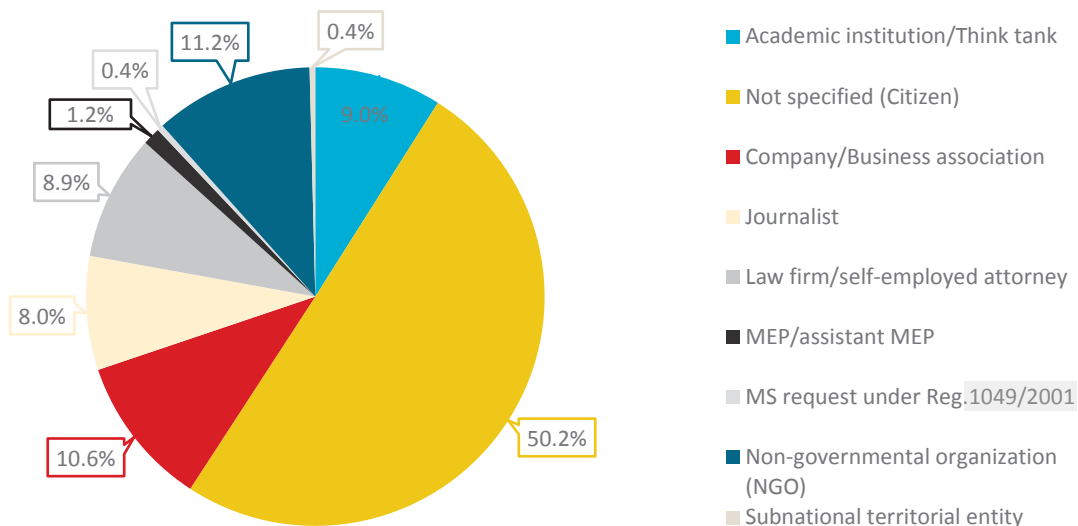
## CONFIRMATORY APPLICATIONS 2021



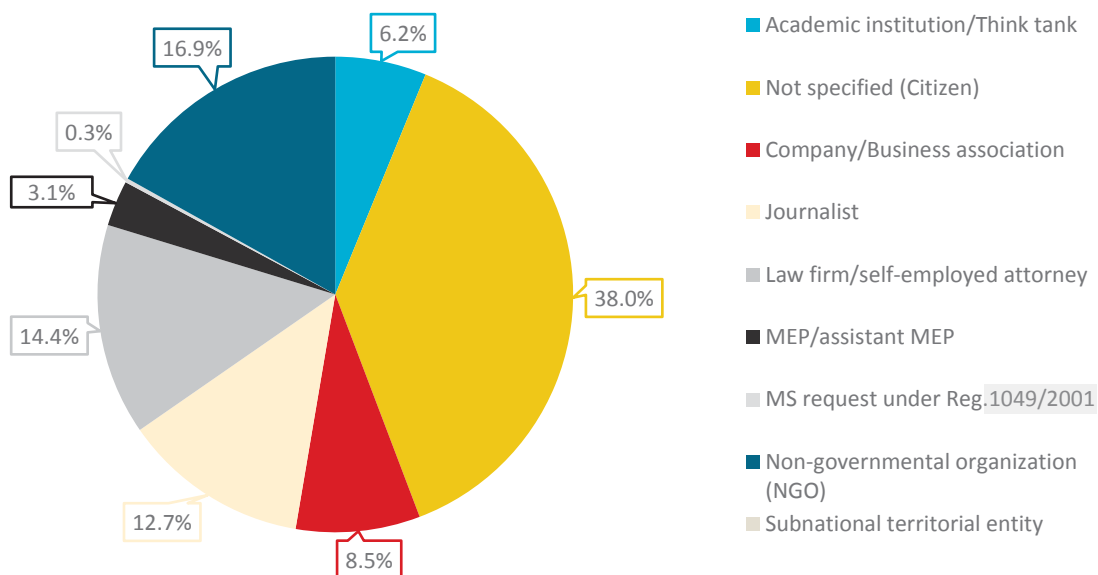


### 3.3. Social and occupational profile of applicants (Annex – Table 6)<sup>12</sup>

#### INITIAL APPLICATIONS 2021



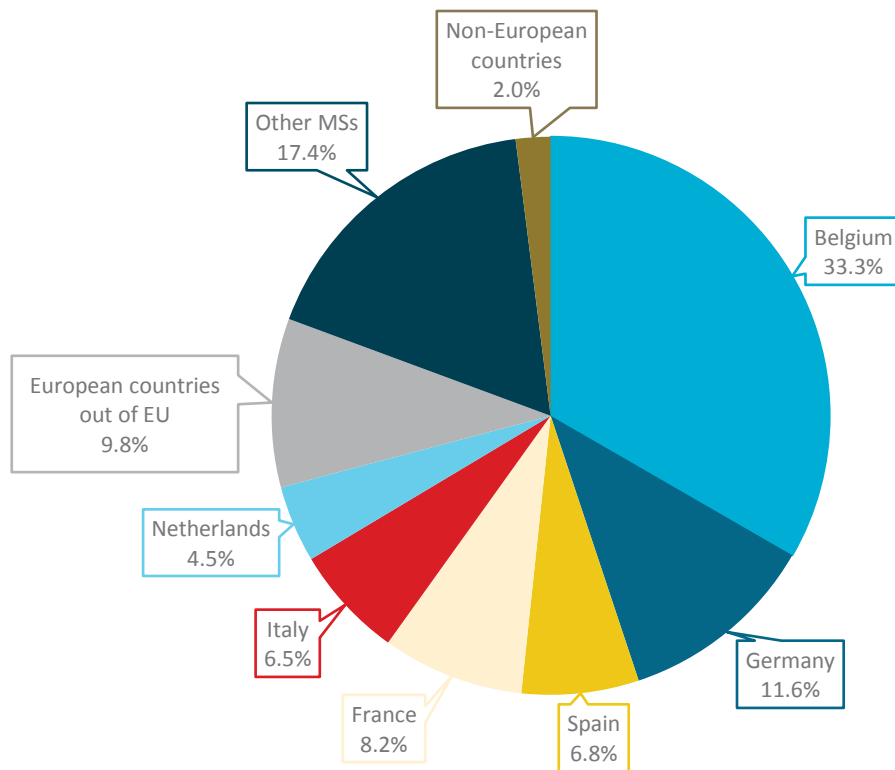
#### CONFIRMATORY APPLICATIONS 2021



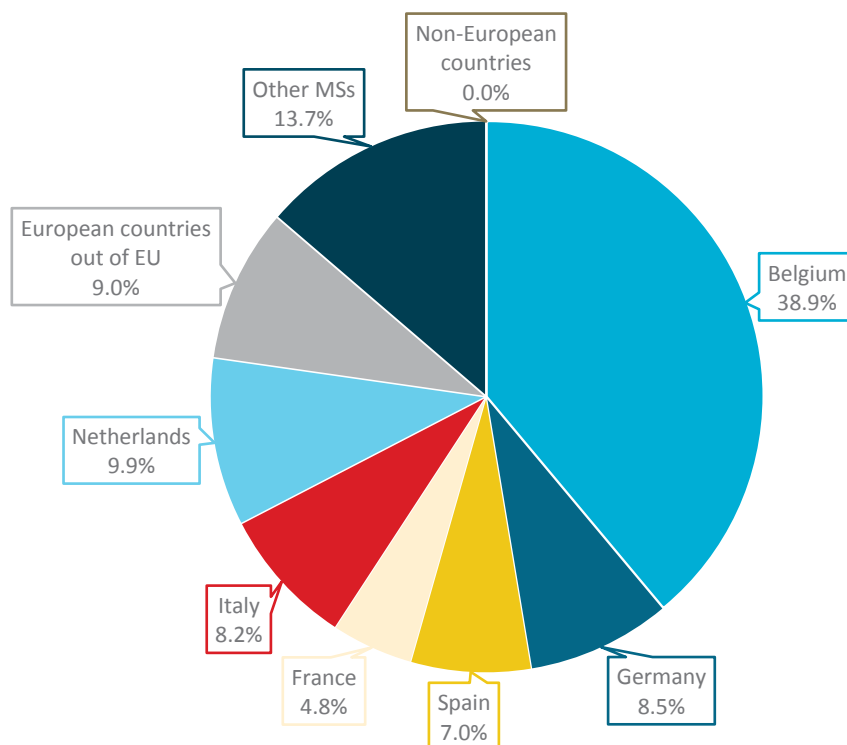
<sup>12</sup> Applicants may indicate, on the application form of the Europa Website, their social/occupational profile. Member State authorities is a new category introduced in 2018 in order to reflect the fact that national authorities of Member States are entitled to submit applications for access to documents in the framework of Regulation (EC) No 1049/2001. For statistical purposes, the profile of ‘citizens’ covers the applicants who indicated their profile as such, and constitutes the default option covering those who did not select any social/occupational category.

3.4. The geographical origin of applicants (Annex – Table 7)

### INITIAL APPLICATIONS 2021



### CONFIRMATORY APPLICATIONS 2021

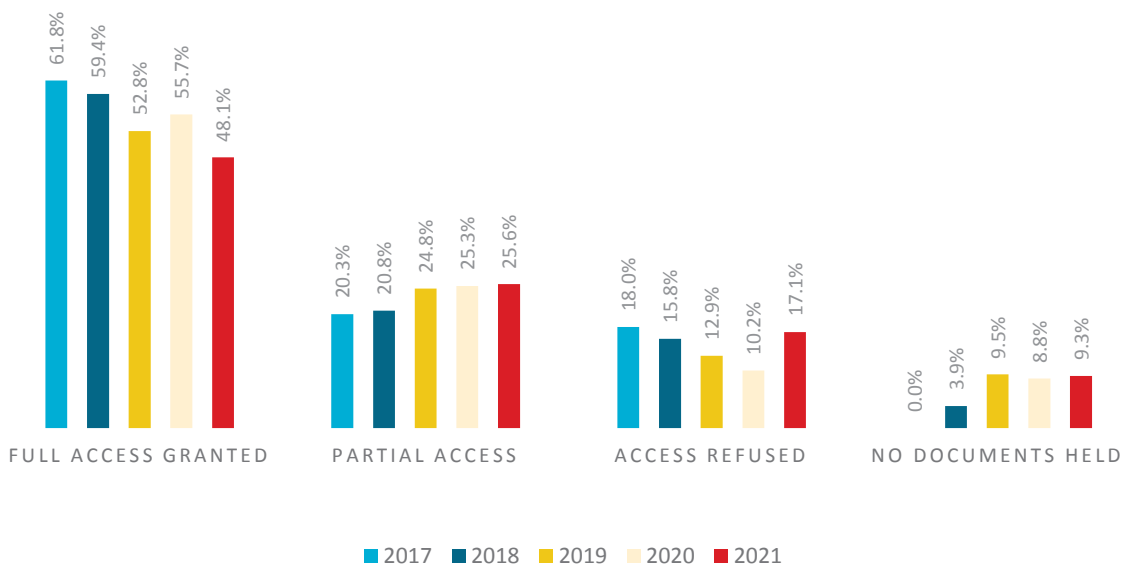


#### 4. APPLICATION OF EXCEPTIONS TO THE RIGHT OF ACCESS

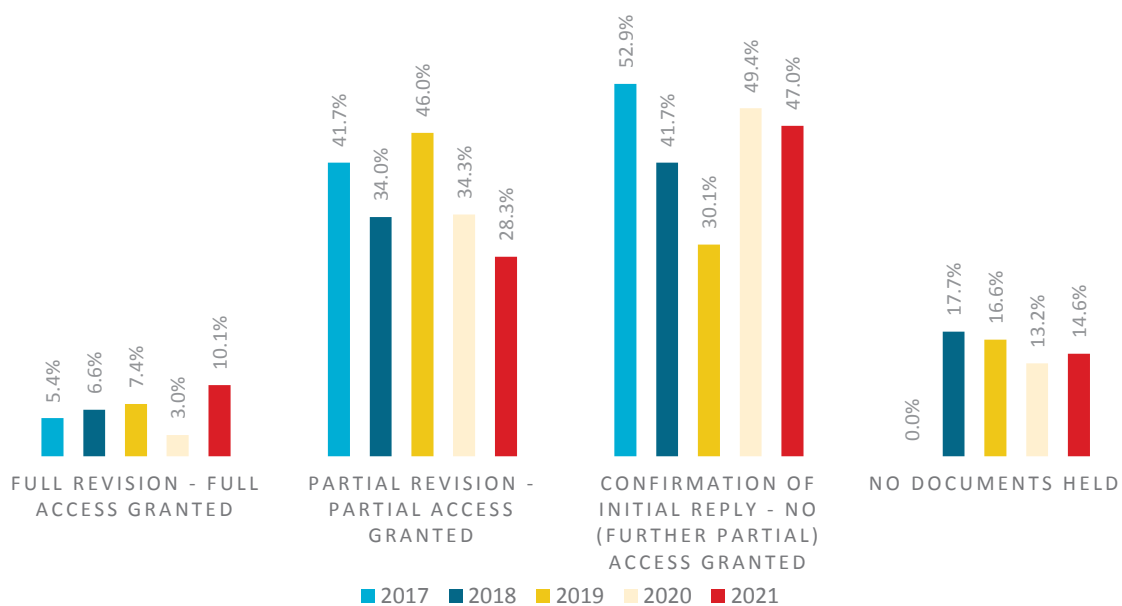
The right of access provided in Regulation (EC) No 1049/2001 is subject to a number of specific exceptions, which are set forth in Article 4 of the Regulation. Any refusal, whether full or partial, must be justified under at least one of these exceptions.

##### 4.1. Types of access provided (Annex – Tables 8 and 9)

### INITIAL STAGE

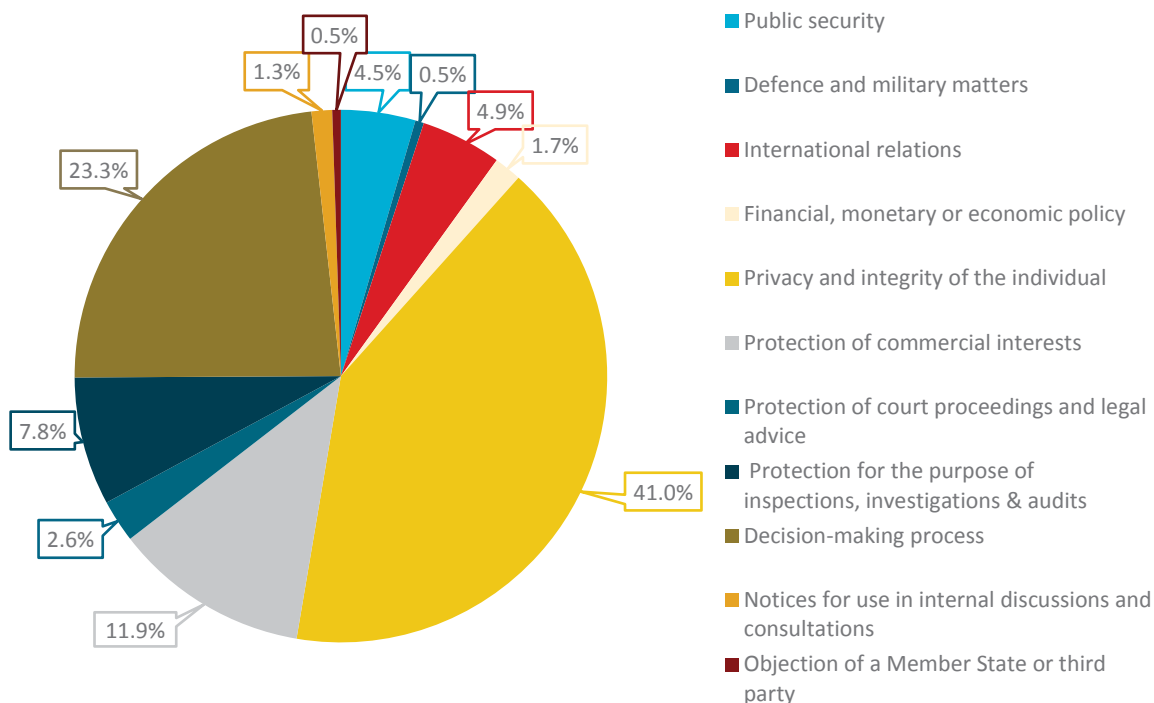


### CONFIRMATORY STAGE

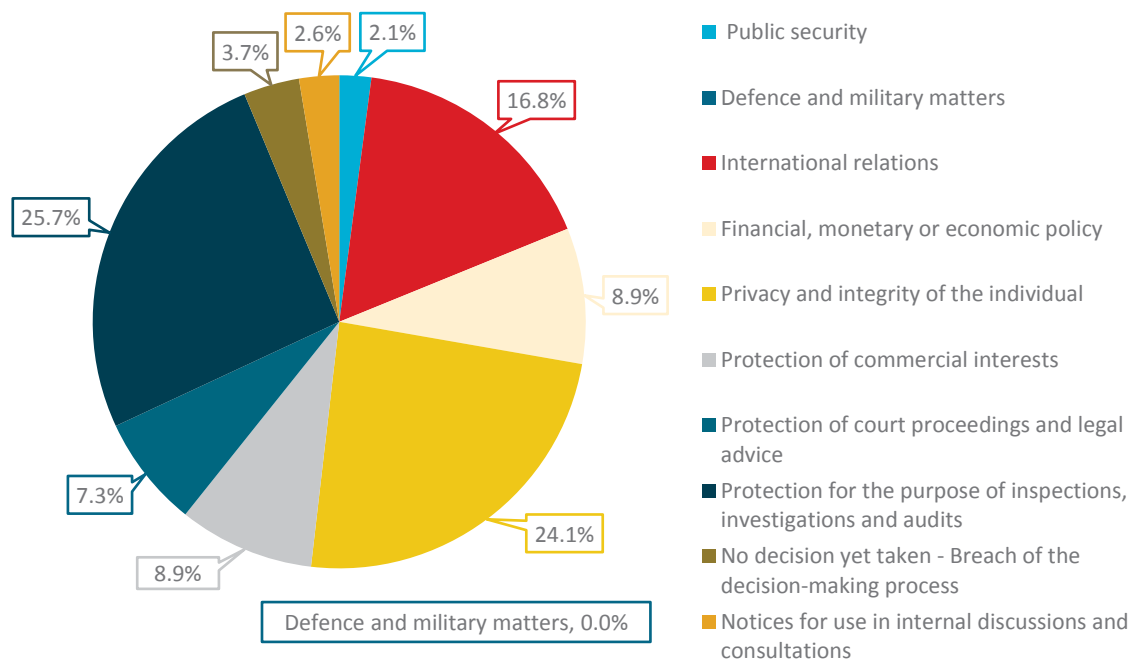


4.2. Invoked exceptions to the right of access<sup>13</sup> (Annex – Table 10)

### INITIAL STAGE 2021



### CONFIRMATORY STAGE 2021



<sup>13</sup> On the basis of Article 4 of Regulation (EC) No 1049/2001.

## 5. COMPLAINTS TO THE EUROPEAN OMBUDSMAN

In 2021, the European Ombudsman opened 41 new enquiries where access to documents was either the main or a subsidiary part of the complaint, compared to 28 in 2020 and 32 in 2019, and closed 32 complaints, compared to 23 in 2020<sup>14</sup>.

Against this background, in 2021, in four of the 32 closed cases, the European Ombudsman found instances of maladministration<sup>15</sup>. The remaining 28 cases were all closed without any remarks or suggestions for improvement from the European Ombudsman.

## 6. NEW CASE LAW ON ACCESS TO DOCUMENTS

### 6.1. The Court of Justice

In 2021, the Court of Justice did not hand down any judgment on appeal concerning the right of public access to documents under Regulation (EC) No 1049/2001 where the European Commission was a party to the proceedings, compared to two in 2020.

### 6.2. The General Court

In 2021, the General Court handed down 11 judgments or orders in proceedings to which the European Commission was a party in relation to decisions concerning the right of access to documents under Regulation (EC) No 1049/2001<sup>16</sup>, compared to 10 in 2020.

Amongst these 11 judgments, in four of them the application for annulment was dismissed<sup>17</sup>.

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<sup>14</sup> The statistics concern the European Ombudsman cases for all European Commission departments except the European Anti-Fraud Office.

<sup>15</sup> In case 1944/2019, the European Ombudsman confirmed that the Commission's refusal to grant access to the audio recordings and the email concerning positions taken by Member States on an implementing regulation laying down eco-design requirements for electronic displays constitutes maladministration. Case 358/2020 concerns a refusal by the Commission to grant public access to the correspondence with Denmark in a state aid file closed in 2005. The European Ombudsman recommended the Commission to examine whether the documents can be disclosed. In case 790/2021, the European Ombudsman took the view that the Commission's refusal of public access to correspondence exchanged with Member States authorities concerning the distribution of medical masks in the context of the COVID-19 pandemic constituted maladministration. Another instance of maladministration was identified in case 1527/2020 where the Commission said that it did not hold any documents containing the requested information on compliance with biofuels sustainability criteria under the Renewable Energy Directive, while the Ombudsman found that the Commission held this information not contained in a single document, but rather spread over a number of documents.

<sup>16</sup> Orders of 19 January 2021, [Umweltinstitut München v European Commission, T-712/18, ECLI:EU:T:2021:29](#); of 29 July 2021, [ClientEarth AISBL v European Commission, T-52/21, ECLI:EU:T:2021:505](#); of 12 November 2021, [Fabien Courtois and Others v European Commission, T- 669/21](#); and judgments of 14 July 2021, [Public.Resource.Org, Inc. and Right to Know CLG v European Commission, T-185/19, ECLI:EU:T:2021:445](#); of 1 September 2021, [Andrea Homoki v European Commission, T-517/19, ECLI:EU:T:2021:529](#); of 29 September 2021, [AlzChem Group AG v European Commission, T-569/19, ECLI:EU:T:2021:628](#); of 29 September 2021, [TUIfly GmbH v European Commission, T-619/18, ECLI:EU:T:2021:627](#); of 6 October 2021, [Aeris Invest Sàrl v European Central Bank, T-827/17, ECLI:EU:T:2021:660](#); of 6 October 2021, [Organización de Consumidores y Usuarios \(OCU\) v European Central Bank, T-15/18, ECLI:EU:T:2021:661](#); of 1 December 2021, [JR v European Commission, T-265/20, ECLI:EU:T:2021:850](#); of 8 December 2021, [JP v European Commission, T-247/20, ECLI:EU:T:2021:871](#).

In two cases, it held that there was no need to adjudicate<sup>18</sup>. In another case, the action was dismissed as manifestly inadmissible<sup>19</sup>.

In three of those judgments, the General Court ordered the annulment of the decision. In T-517/19<sup>20</sup>, the General Court annulled the decision of OLAF in so far as it applies a general presumption of confidentiality to refuse access to an OLAF Final Report in a case in which both the OLAF investigation and the follow-up actions are closed. In T-827/17<sup>21</sup>, it annulled the decision of the European Central Bank (ECB) in so far as it refused access to the result of the vote set out in the minutes of the 447th meeting of the Governing Council of the ECB. In T-247/20<sup>22</sup>, it annulled Commission Decision in so far as it refused to grant access to the questions set out in the specific sections of two documents in the framework of an EPSO competition, which were not intended to be reused in subsequent competitions.

In one case, it held both that there was no need to adjudicate for part of the claim and ordered the annulment of the contested decision in so far as it refused access to the document containing the weighting coefficients for two parts of the oral test in the framework of an internal competition<sup>23</sup>.

In the framework of this body of case law developed in 2021, the General Court had the opportunity to clarify issues extending from substantive points to more procedural aspects arising from the implementation of Regulation (EC) No 1049/2001.

### 6.2.1. Clarifications of some substantive rules

In 2021, the substantive clarifications issued by the General Court essentially revolved around the application of the exceptions relating to the protection of the financial, monetary or economic policy<sup>24</sup> and to the protection of the institution's decision-making process<sup>25</sup>. Furthermore, the General Court brought further clarifications to the concept of overriding public interest<sup>26</sup> and the general presumption of confidentiality<sup>27</sup>.

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<sup>17</sup> Namely, judgments in *Public.Resource.Org, Inc. and Right to Know CLG v European Commission*, T-185/19, *op.cit.*; *AlzChem Group AG v European Commission*, T-569/19, *op.cit.*; *TUIfly GmbH v European Commission*, T-619/18, *op.cit.*; and *Organización de Consumidores y Usuarios (OCU) v European Central Bank*, T-15/18, *op.cit.*;

<sup>18</sup> Namely, orders in *ClientEarth AISBL v European Commission*, T-52/21, *op.cit.*; and *Umweltinstitut München v European Commission*, T-712/18, *op.cit.*

<sup>19</sup> Namely, order in *Fabien Courtois and Others v European Commission*, T-669/21, *op.cit.*

<sup>20</sup> Judgment in *Andrea Homoki v European Commission*, T-517/19, *op.cit.*

<sup>21</sup> Judgment in *Aeris Invest Sàrl v European Central Bank*, T-827/17, *op.cit.*

<sup>22</sup> Judgment in *JP v European Commission*, T-247/20, *op.cit.*

<sup>23</sup> Namely, judgment in *JR v European Commission*, T-265/20, *op.cit.*

<sup>24</sup> Judgment in *Aeris Invest Sàrl v European Central Bank*, T-827/17, *op.cit.* Paragraphs 147-148, 153-154.

<sup>25</sup> Judgment in *JR v European Commission*, T-265/20, *op.cit.* Paragraphs 130-131.

<sup>26</sup> Judgments in *Public.Resource.Org, Inc. and Right to Know CLG v European Commission*, T-185/19, *op.cit.* Paragraphs 47-54, 65-73, 103-105, 107, 117, 128-129; and in *TUIfly GmbH v European Commission*, T-619/18, *op.cit.*; Paragraphs 47-49.

<sup>27</sup> Judgments in *Aeris Invest Sàrl v European Central Bank*, T-827/17, *op.cit.* Paragraphs 197-199; *JP v European Commission*, T-247/20, *op.cit.* Paragraphs 62-64, 89-94, 98-103; *AlzChem Group AG v European Commission*, T-569/19, *op.cit.* Paragraphs 64, 84-87, 89-91; and *TUIfly GmbH v European Commission*, T-619/18, *op.cit.*; Paragraphs 42, 50-53;

### 6.2.2. Clarifications of some procedural rules

The main procedural issues addressed in 2021 by the General Court concerned the mandatory nature of the time limits<sup>28</sup> and the applicability of Regulation (EC) No 1049/2001 in case the application for access does not make explicit reference to this Regulation<sup>29</sup>.

### 6.3. New Court cases introduced against the European Commission in 2021

In 2021, 27 cases involving the European Commission were brought before the European Courts.

25 of them concern actions introduced before the General Court<sup>30</sup>, one of which was already closed during the course of 2021 with a decision concluding that there was no need to adjudicate<sup>31</sup> and another in which the action was dismissed as manifestly inadmissible<sup>32</sup>.

In parallel, two appeals were introduced before the Court of Justice against a judgment of the General Court in cases where the European Commission was a party to the proceedings<sup>33</sup>.

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<sup>28</sup> Judgment in *AlzChem Group AG v European Commission*, T-569/19, *op.cit.* Paragraphs 26, 27, 29.

<sup>29</sup> Judgment in *JR v European Commission*, T-265/20, *op.cit.* Paragraphs 46-48.

<sup>30</sup> Namely cases *ClientEarth AISBL v European Commission*, T-792/21; *Fabien Courtois and Others v European Commission*, T-761/21; *Smart Kid S.A. v European Commission*, T-712/21; *Margrete Auken and Others v European Commission*, T-689/21; *Fabien Courtois and Others v European Commission*, T-669/21, *op.cit.*; *Troy Chemical Company BV v European Commission*, T-662/21; *ClientEarth AISBL v European Commission*, T-661/21; *Hans-Wilhelm Saure v European Commission*, T-651/21; *Foodwatch eV v European Commission*, T-643/21; *Giorgio Basaglia v European Commission*, T-597/21; *Patrick Swords v European Commission*, T-586/21; *Hans-Wilhelm Saure v European Commission*, T-524/21; *Hans-Wilhelm Saure v European Commission*, T-506/21; *Michele Vendrame v European Commission*, T-379/21; *Eurecna SpA v European Commission*, T-377/21; *ClientEarth AISBL v European Commission*, T-359/21; *ClientEarth AISBL v European Commission*, T-354/21; *Giorgio Basaglia v European Commission*, T-257/21; *Hans-Wilhelm Saure v European Commission*, T-232/21; *Ondřej Múka v European Commission*, T-214/21; *Covington & Burling and Bart Van Vooren v European Commission*, T-201/21; *Hans-Wilhelm Saure v European Commission*, T-154/21; *Hans-Wilhelm Saure v European Commission*, T-151/21; *"Sistem ecologica" production, trade and services d.o.o. Srbac v European Commission*, T-81/21; and *ClientEarth AISBL v European Commission*, T-52/21, *op.cit.*

<sup>31</sup> Namely order of 29 July 2021, *ClientEarth AISBL v European Commission*, T-52/21, *op.cit.*

<sup>32</sup> Namely order of 12 November 2021, *Fabien Courtois and Others v European Commission*, T-669/21, *op.cit.*

<sup>33</sup> Namely cases *Aeris Invest Sàrl v European Central Bank*, C-782/21 P; and *Public.Resource.Org, Inc. and Right to Know CLG v European Commission*, C-588/21 P.