



Public Access to Documents 2018

European Parliament's
Annual Report

Transparency Unit

Directorate-General for the Presidency
European Parliament

March 2019

FOREWORD

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

In accordance with Article 17(1) of this Regulation: *"Each institution shall publish annually a report for the preceding year including the number of cases in which the institution refused to grant access to documents, the reasons for such refusals and the number of sensitive documents not recorded in the register"*.

According to Rule 116(6) of Parliament's Rules of Procedure, Parliament's Bureau shall adopt the annual report referred to in Article 17(1) of Regulation (EC) No 1049/2001.

ON METHODOLOGY

Parliament's 2018 annual report is prepared along the following methodology:

- Figures on consulted and requested documents refer to specified documents only;
- Applications for very large or indefinite numbers of documents, which the institution was unable to identify, are not reflected in the numbers on requested documents;
- Figures on applications for access to documents take account of two types of applications, for specified documents and for indefinite number of documents;
- Partial access decisions are counted as a positive responses;
- Confirmatory applications may relate either to initial decisions refusing access or to initial decisions granting partial access;
- It is the day of registration of the initial application that determines the year of the corresponding confirmatory application.

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European Parliament's Annual Report on Public Access to Documents - 2018 (Article 17 of Regulation (EC) No 1049/2001)

Executive Summary

Figures

- By 31 December 2018, the register's database contained 748.100 references, compared with 683 846 by the end of last year.
- In 2018, the users of Parliament's public register website consulted 76 270 documents directly through the register. During the same period, Parliament received, via the online application form or by e-mail, 498 applications involving 591 specified documents, an increase of 10 % in requests compared to 2017.
- Out of the 498 applications, 113 involved documents not previously disclosed to the public.
- The overall positive response rate exceeded 96% in 2018.
- Parliament denied access in 17 cases, mainly in connection with applications for documents of the Bureau of the European Parliament.

Trends

- Applicants showed a strong interest in documents relating to trilogue negotiations in legislative procedures, to the work of Parliament's governing bodies and in particular to the Bureau dealings with the financing of political parties and foundations and Members' expenditure.
- With nine confirmatory applications in the course of the year, the confirmatory application rate decreased slightly compared to 2017.

CHAPTER I

Applications for access to documents pursuant to Regulation (EC) No 1049/2001 in 2018

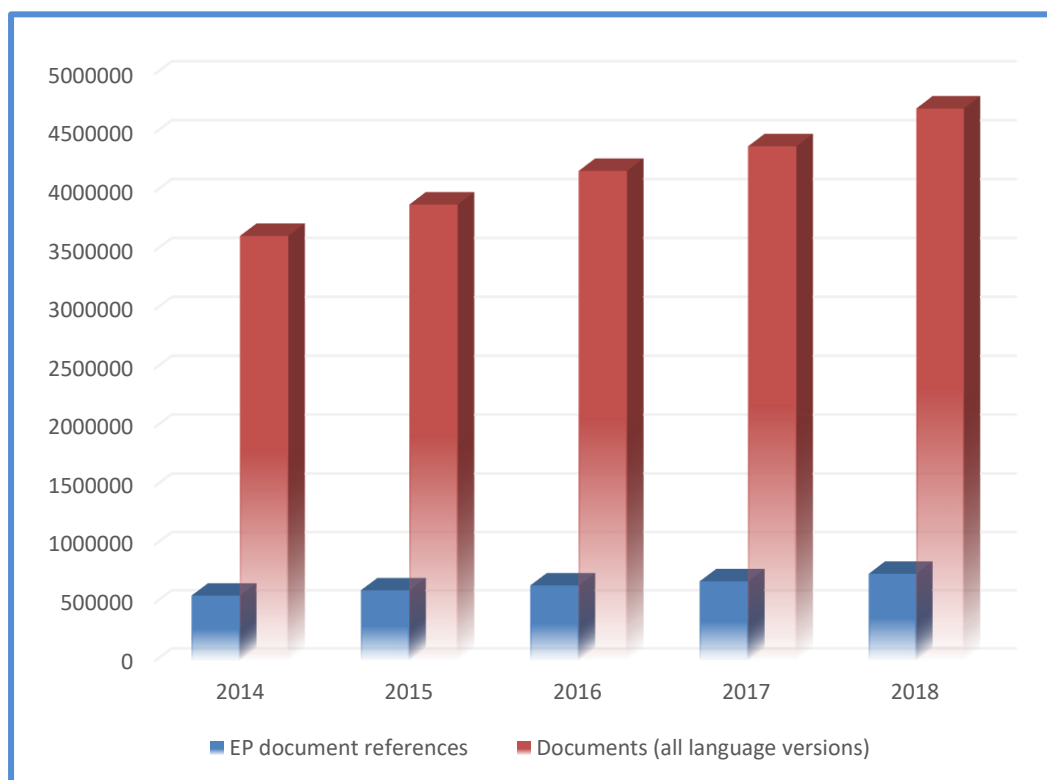
The figures and statistics discussed in this section allow for the identification of trends in the field of public access to documents. They also give to the public a broad picture of Parliament's implementation of Regulation (EC) No 1049/2001.

A) The public register of Parliament's documents

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

With an increase of more than 9% compared to the previous year, by 31 December 2018, the number of document references in the register's database reached 748 101 (representing 4 704 921 documents in all, taking the several language versions into account). No sensitive document, within the meaning of Article 9 of Regulation (EC) No 1049/2001, was recorded in the public register.

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



B) Consulted and requested documents¹

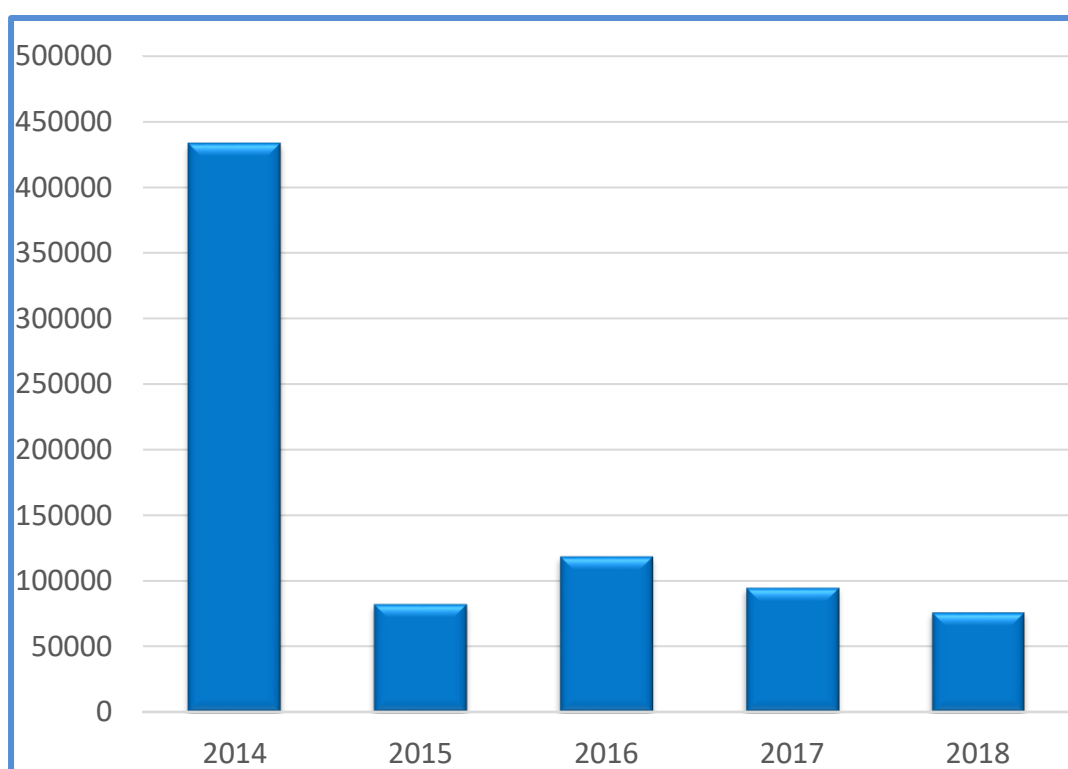
Practically all documents in the public register of Parliament's documents can be directly downloaded via the website, in line with Article 12 of Regulation (EC) No 1049/2001, which provides that the institutions shall make their documents directly accessible as much as possible. Those documents that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

B.1) Directly consulted documents

76 270 documents were directly consulted on Parliament's public register website in 2018. It is of note 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 130 of the Rules of Procedures (19.16%), answers to parliamentary questions (26.23%), committee reports (5.99%), and documents received from the European Commission (3.46%).

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



¹ These figures refer to specified documents only

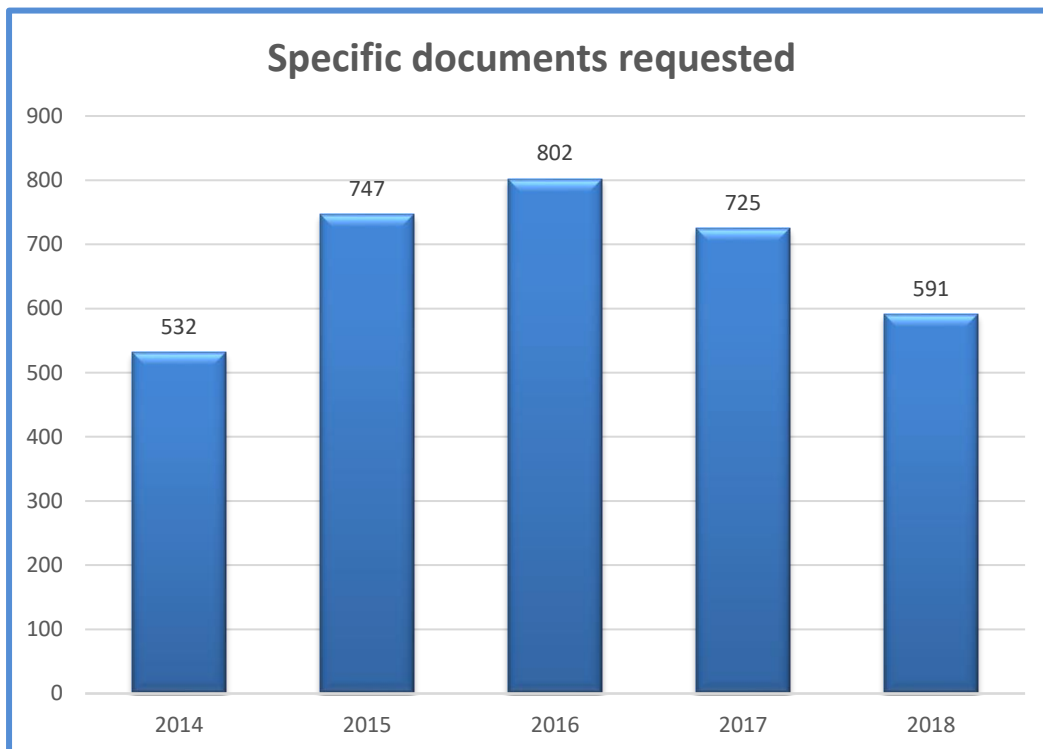
² <https://www.secure.europarl.europa.eu/RegistreWeb/requestdoc/secured/form.htm?language=EN>

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

In 2018, 591 specified documents were requested from Parliament via the online application form or by e-mail. This figure represents a slight decrease compared to the previous year.

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

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



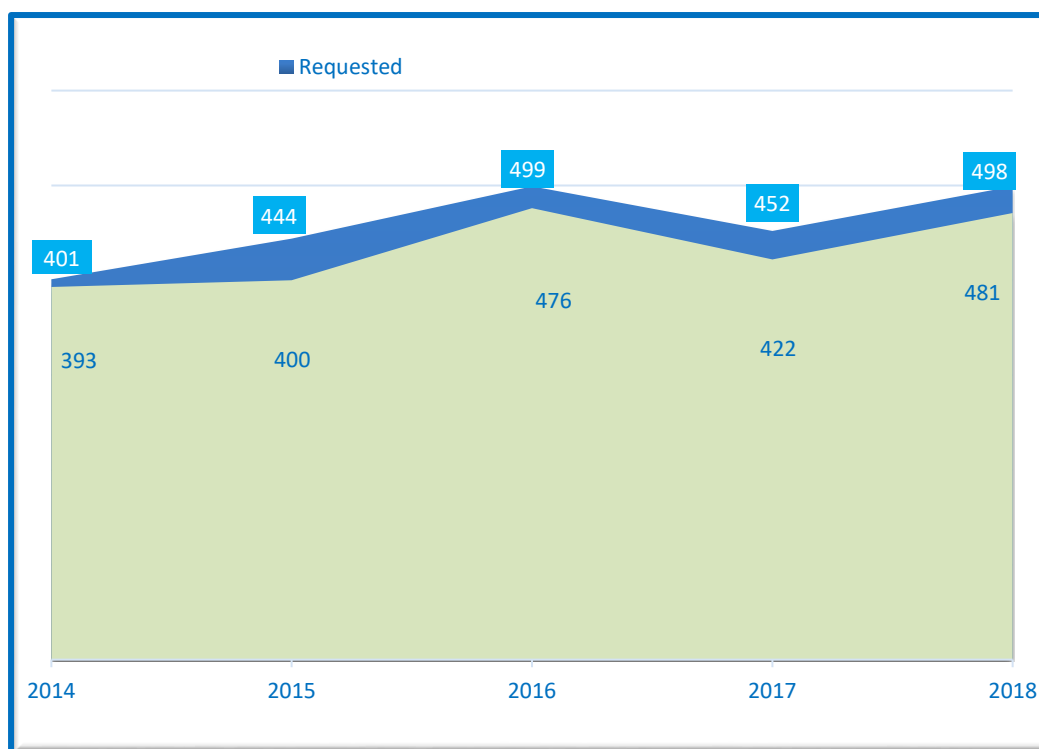
C) Figures on applications

In 2018, Parliament received 498 applications through the online application system or by e-mail. 399 of those concerned specified documents, while 99 concerned indefinite numbers of documents. Of the 498 applications, 22 involved inter-institutional consultations under the "Memorandum of Understanding"³ (see Chapter II, C).

About 20% of all applications received over the year sought public access to either "all documents related to" a particular subject or "all documents containing information on" a particular theme. The processing of these applications is usually quite time-consuming.

Out of the 498 applications received in 2018, Parliament responded positively in 481 instances. This figure includes 13 cases in which access to the requested documents was partially granted.

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



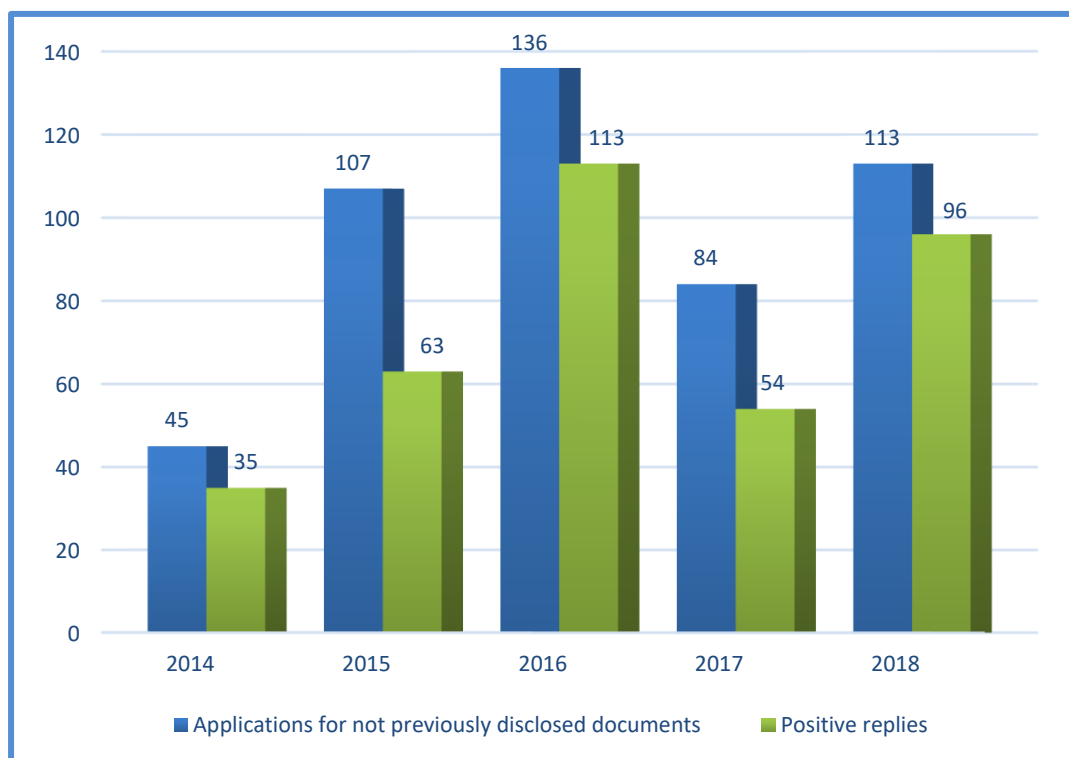
³ The Memorandum of Understanding entered into by the services of the European Parliament, the Council and the Commission in order to swiftly handle consultations under Article 4(4) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

Besides, 113 requests out of the 498 applications involved documents not previously disclosed to the public.

Most applications for previously undisclosed documents concerned trilogue negotiations (43%), governing bodies' work (18%), and administrative documents (14%), with a particular focus on the financing of political parties and groups (11%).

In 2018, Parliament responded positively to 96 applications for access to previously undisclosed documents.

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



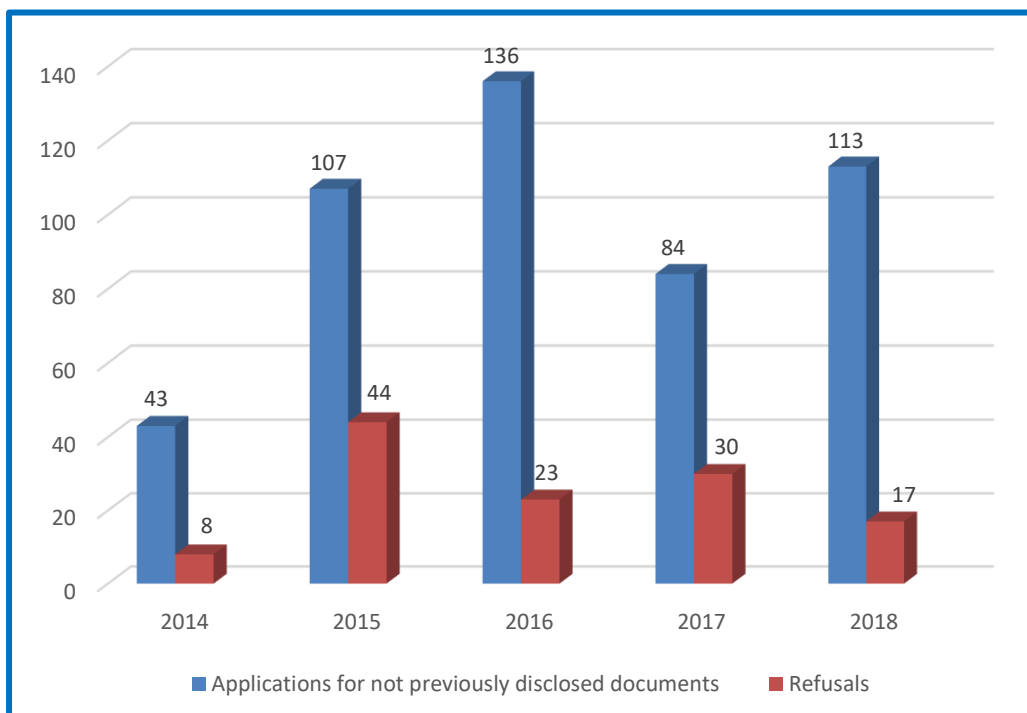
In 2018, Parliament denied public access by means of a decision by the competent authority in 17 cases.

There were nine confirmatory applications⁴. In every case, the institution confirmed its initial position.

In six out of the 17 refusal cases, the request concerned documents of the Bureau of the European Parliament. Besides, three cases concerned tenders or staff matters handled by Parliament's administrative services.

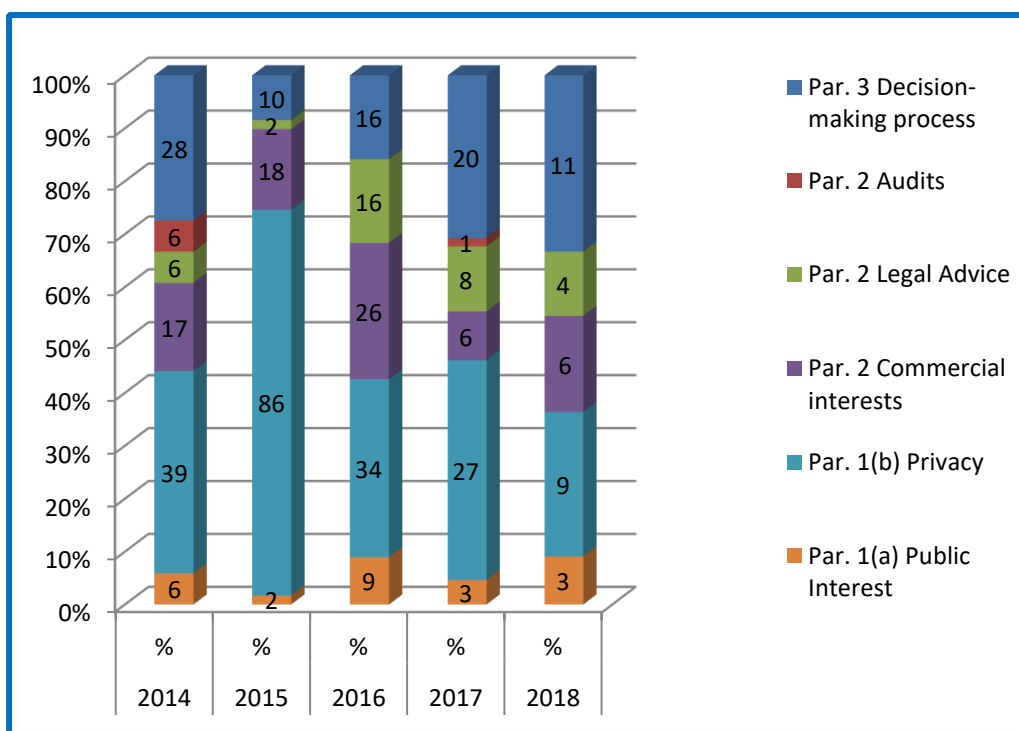
⁴ Confirmatory applications can relate to total refusal or partial access (Article 7 (2) of Regulation (EC) No 1049/2001). In 2017, two confirmatory applications were treated in one reply.

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



This year's refusals were chiefly based on the need to protect the decision-making process of the institution (Article 4(3) of Regulation (EC) No 1049/2001), the privacy and the integrity of individuals (point (b) of Article 4(1) 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).

(Fig. 7) Rate of use of exceptions under Article 4 of Regulation (EC) No 1049/2001

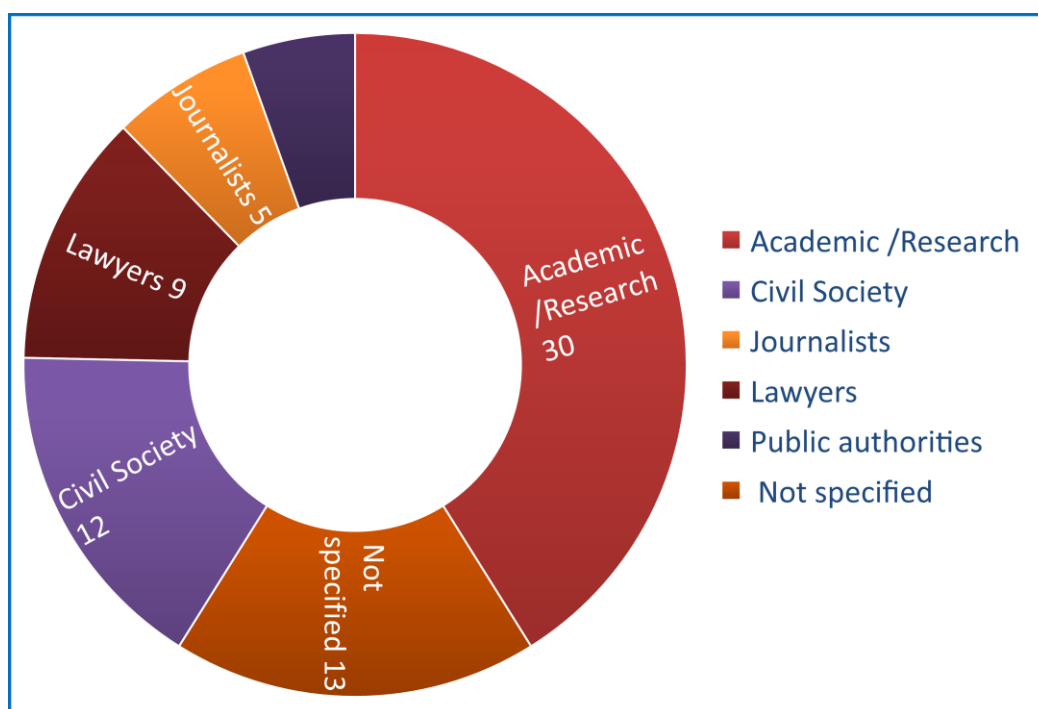


In conclusion, Parliament's overall positive response rate remained high, at about 96%. Besides, the positive response rate for applications involving not previously disclosed documents was at 85%.

D) Applicants' profiles⁵

Academics and researchers still represent the largest share of applicants with over 30 % of applicants pertaining to this category, followed by the business sector, environmental organizations and other interest representatives, accounting together for around 12% of applications. Journalists, account only for 5% of applicants this year.

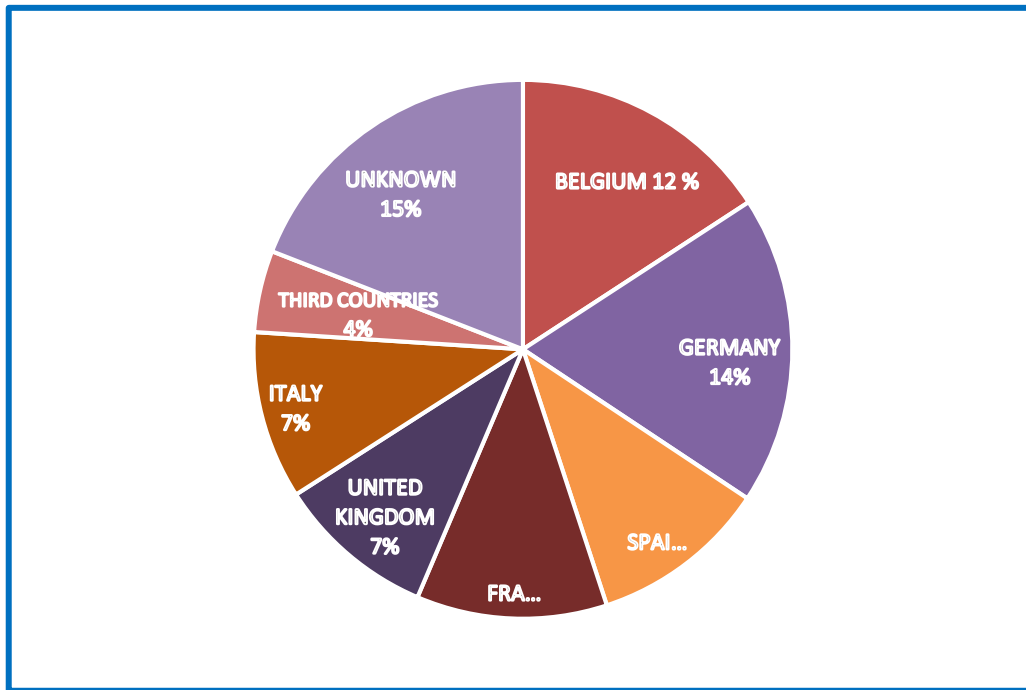
(Fig. 8) **Profiles of applicants for access to documents in 2018**



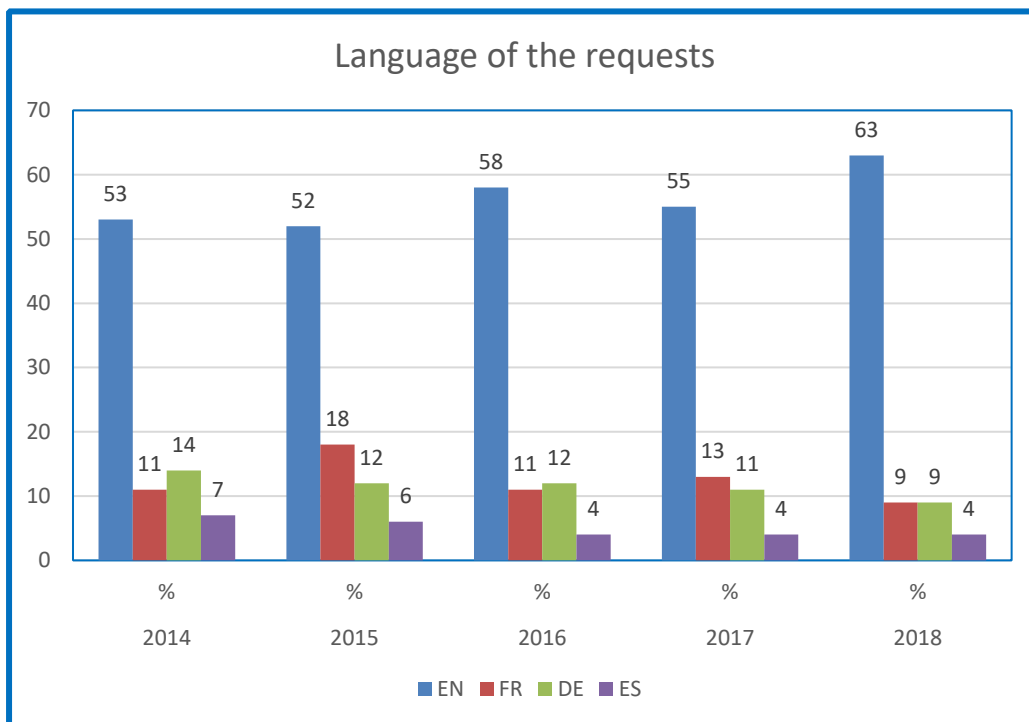
⁵ Data on applicants' profiles are gathered on the basis of the information provided by applicants in their applications. However, as Regulation (EC) No 1049/2001 does not require applicants to provide information about their identity, a certain number of applicants indeed choose not to reveal their occupation; this is the case in particular for applications submitted by email

The geographical distribution of applications among the Member States changed slightly. Around 14% of applications originated in Germany, followed (in descending order) by Belgium (12%), Spain and France (8% each), and Italy/United Kingdom (10% each). The number of applications from third countries accounted for approximately 4% of the total.

(Fig. 8a) **Geographical distribution**



(Fig. 8c) **Language**



English remained the language most frequently used for applications (63%), followed by French and German (9%) and Spanish (4%) following patterns similar to those in previous years.

CHAPTER II

Trends and specific issues

The year 2018 saw a steep increase in the number of applications for access to legislative trilogue documents and, in particular, for access to multi-column tables. Since those tables pertain to the three institutions taking part in the legislative negotiations, inter-institutional cooperation in access to documents matters intensified accordingly. The public's interest in getting access to notes presented to the Bureau of the European Parliament was also particularly high.

A) Applications concerning multi-column documents discussed in trilogue meetings

Multi-column documents set out the positions of each of the three institutions involved in inter-institutional legislative negotiations, the European Parliament, Council and Commission, in three separate columns, as well as compromise wording or comments detailing aspects of the negotiations in one or more additional columns. Those documents, which are shared between the institutions, are their main tool to discuss legislative proposals and reach an agreement that can be approved at an early stage of the legislative procedure, usually at first reading.

They allow for position differences to be reconciled timely and methodically, and for the negotiations to progress in an orderly fashion. They are used to ensure internal transparency by making certain that all parties involved receive up-to-date information on the state of the negotiations.

On 22 March 2018, the General Court delivered a judgment in access to document matters. In Case T-540/15, *Emilio De Capitani v European Parliament* (see Chapter III), the Court annulled a Parliament decision refusing public access to multi-column tables on the ground that the institution had not actually demonstrated that the disclosure of the requested documents would have seriously undermined the institution's ability to make decisions in the legislative file concerned.

Since then, Parliament has seen a significant increase in applications requesting public access to multi-column documents discussed on trilogue meetings.

Parliament assesses the requests on a case-by-case basis, in accordance with the case-law. It carries out a careful analysis of the requested documents and consults the other institutions involved, the Council and the Commission. So far, since the judgment, and in large part due to the demanding test to refuse public access to legislative documents confirmed therein by the Court, Parliament has disclosed all the multi-column documents to which access was requested under Regulation (EC) No 1049/2001.

Nonetheless, the Court ruling leaves the possibility for the institutions to refuse public access to documents drawn up in the framework of ongoing trilogues. It remains open to an institution to refuse public access to certain documents of a legislative nature in duly justified cases. The institution must then demonstrate, based on specific considerations relating to the proposal, that it is reasonably foreseeable and not purely hypothetical that

full access to the documents at issue would undermine, specifically and actually, the decision-making process.

B) Applications concerning notes to the attention of the Bureau of the European Parliament

A second 2018 trend worth mentioning is the interest of the public in accessing the notes prepared to the attention of the Bureau of the European Parliament.

These notes provide the Members of the Bureau with background information, advice and decision proposals, intended for internal use. Parliament where appropriate considers whether the confidentiality of those notes is required for its administration to be able to set out its assessments and proposals therein in a frank and thorough manner, and that this, in turn, allows Parliament's governing body to properly carry out its duties.

Therefore, where Parliament reaches the conclusion that the public disclosure of a note to the Bureau would compromise the institution's ability to seek legal advice from its services or seriously undermine the institution's decision-making process, public access to the note is refused. Otherwise, the publication of these documents would lead the services involved in their drafting to refrain from setting out in such notes certain views and knowledge that could be used to challenge or undermine the decisions to be taken. Indeed, this kind of self-censorship would deprive the Bureau from useful arguments and legal opinions enabling it to exercise its prerogatives in the interest of the Parliament and undermine its ability to take informed decisions.

C) Inter-institutional cooperation

The surge in applications for public access to multi-column documents lead to a consecutive increase of consultations between the three institutions involved in trilogue negotiations.

Where Parliament is asked to release a document originating from a third party, it consults the third party to ascertain whether the document should be disclosed or not, in accordance with Article 4(4) of Regulation (EC) No 1049/2001.

Since multi-column tables are jointly produced by the three institutions involved in trilogue negotiations, Parliament consults the Commission and the Council on the potential disclosure of those documents. Inversely, Parliament is consulted by the Commission or the Council where they have been requested to disclose a multi-column document.

Those consultations between the Parliament, the Council and the Commission are ruled by a specific Memorandum of Understanding on the application of Article 4(4) of Regulation (EC) No 1049/2001 that was entered into by the three institutions in 2002.

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 2018. It also discusses the three judgments delivered by the Court in proceedings concerning public access to documents and involving the European Parliament. The Court terminated the only other pending case by way of order declaring the absence of a need to adjudicate.

A) Ombudsman

A.1) Complaints cases closed in 2018

- Complaint 611/2017 and Complaint 895/2017

These two complaints concerned in the main Parliament's way to extend the time limit to reply to applications for public access to documents. The Ombudsman met with the services involved and found no maladministration but noted that the institution could give more detailed information to the applicants on the reasons underlying the time limit extensions.

- Complaint 1956/2018

In this case, the applicant submitted to the Ombudsman a complaint in relation to a Parliament's decision refusing public access to a number of documents on the grounds that they contained personal data the disclosure of which was not allowed under Regulation (EC) No 45/2001. Following the complaint and the emergence of previously unknown facts and grounds in support of the disclosure of the documents, Parliament reassessed the case and disclosed the documents.

A.2) Complaints cases opened in 2018

- Complaint 1651/2018

In this instance, 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). The legal basis for the refusal was Article 4(3) of Regulation (EC) No 1049/2001, which provides for public access to documents to be refused where their disclosure would seriously undermine Parliament's decision-making process.

The Ombudsman met with the services involved and inspected the documents at stake. The case is still ongoing.

- Complaint 2089/2018

This complaint is about the way the European Parliament dealt with a request for public access to an overview of business trips of 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. And this is the crux of this case. Parliament determined that it does not hold the documents requested by the applicant. The complainant did not agree. He asserts that Parliament should produce the requested documents, with the information he seeks, and disclose them. The Ombudsman met with the services involved. The case 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 2018.

B.2) Court Judgements issued in 2018

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

This case concerns a Parliament decision dismissing an application for public access to all requests for quotations related to a number of tender procedures. The Parliament rejected the application on the ground of excessive administrative burden. Prior to the taking of that decision, the institution tried to agree with the applicant on a reduction of the material scope of the request, but to no avail.

The Court confirmed Parliament's position according to which an institution could refuse access to documents on the grounds of a disproportionate administrative workload. Three conditions must be met for this purpose: 1) the workload represented by the individual examination of the documents requested is unreasonable, 2) the institution has consulted with the applicant in order to seek a fair solution and 3) the institution has genuinely investigated all other conceivable options to an individual examination.

These findings are particularly helpful since Parliament is quite often faced with requests for access to so many documents that it is very difficult, or impossible, to handle them within the time limits imposed by Regulation (EC) No 1049/2001.

2) Case T-540/15 - De Capitani v Parliament

The action was brought to the General Court in September 2015, following Parliament's decision of 8 July 2015 to provide only partial access to two multi-column documents relating to pending inter-institutional negotiations on the legislative proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol). The Commission and the Council intervened in the proceedings in support of Parliament.

The General Court ruled out the possibility of a general presumption of non-disclosure of the fourth column of trilogue tables while the legislative procedure is ongoing based on the reasoning that the principles of publicity and transparency are inherent to the EU legislative process. As pointed out by the General Court, presumptions of non-disclosure acknowledged by the Court of Justice and the General Court usually concern specific

proceedings, while the proposed presumption would have covered all fields of legislative activity.

Building on the assumption that the case at stake did not concern the issue of direct access to the “work of trilogues”, the General Court found that none of the grounds relied on by Parliament demonstrated that it was reasonably foreseeable and not purely hypothetical that full access to the documents at issue was likely to undermine, specifically and actually, the decision-making process of the institutions. Parliament’s decision was thus annulled.

3) Cases T-639/15 to T-666/15-Journalists v Parliament

29 actions were brought to the Court of Justice in November 2015, following Parliament's decisions to refuse public access to all supporting documents concerning all Members' expenditure and allowances, on the ground of the protection of the privacy and integrity of individuals, and also on the ground that it was impossible to assess each requested document individually within the time limits provided for by Regulation (EC) No 1049/2001. The number of documents requested was in the order of hundreds of thousands.

In its judgement of 25 September 2018, the Court confirmed Parliament’s position. It ruled that the requested documents contained personal data that can only be disclosed if the applicant demonstrates the necessity of having the data transferred and if there is no reason to assume that the data subjects’ legitimate interests might be prejudiced, in accordance with the combined reading of Article 4(1)(b) of Regulation (EC) No 1049/2001 and Article 8(b) of Regulation (EC) No 45/2001.

The Court found that Parliament’s refusal to grant access was legally sound since the applicants had not demonstrated the necessity of the transfer of the personal data of the Members concerned by the requests. In this respect, the applicants stated various objectives pursued by their requests, namely, on the one hand, to enable the public to verify the appropriateness of the expenses incurred by MEPs and, on the other, to guarantee the public right to information and transparency. However, the Court deemed that because of their excessively broad and general wording, those objectives cannot, in themselves, establish the necessity of the transfer of the personal data in question.

4) Case T-421/17, 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 dated 8 July 2015 on the ground 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 very court proceedings T-540/15.

In 2018, the Court ruled that since the applicant had eventually received access to the document she sought access to, she did not have an actual interest in the adjudication of the case anymore, and closed the case.

Final Remarks

Following Parliament's acceptance of the Court's ruling in *Case T-540/15 De Capitani v Parliament*, the institution adapted its approach as regards public access to trilogue documents. Since the ruling was delivered, Parliament, after a case-by-case analysis in the light of the case law, has disclosed all the 4-column tables to which access was requested under Regulation (EC) No 1049/2001.

As forecast in last year's report, the interest of the public in accessing internal reports and notes on the administrative tasks of the house and in particular those of the Bureau, has increased in 2018. With the upcoming European elections to be held from 23 to 26 May 2019, Parliament has already noticed a growing interest from the public in accessing election related documents, in particular the Parliament's communication strategy for the 2019 European elections and its presence on social media.

The United Kingdom's ongoing withdrawal from the European Union is also expected to generate growing public interests and, consequently, an increase in the number of applications for access to documents relating to this process.