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REPORT FROM THE COMMISSION

on the application in 2023 of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents

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1. INTRODUCTION

This annual report is drafted in accordance with Article 17(1) of Regulation (EC) No 1049/2001[1] regarding public access to European Parliament, Council and Commission documents (hereafter 'Regulation (EC) No 1049/2001'). It covers the implementation of Regulation (EC) No 1049/2001 by the European Commission in 2023 and is based on statistical data[2] summarised in the Annex. It also refers to the findings of the European Ombudsman concerning the European Commission's implementation of Regulation (EC) No 1049/2001 and the rulings handed down by the EU Courts.

Transparency, integrity, and accountability are the essential prerequisites of a democracy based on the rule of law. They are key principles to promote good governance and build trust in the policy-making process, thereby enhancing the legitimacy and credibility of public institutions. Safeguarding the effectiveness of the citizens' right of access to documents held by the institutions is a cornerstone of the European Commission's pledge for transparency[3]. The data on fully or partially disclosed documents, further detailed in chapter 4, confirm the European Commission's commitment 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 applications is handled on a decentralised basis by the various Commission Directorates-General and services. In 2023, the number of initial applications reached 7,274; as regards confirmatory applications, their number reached 599. Confirmatory applications, whereby the applicants request a review of initial replies fully or partially refusing access, are dealt with by the Secretariat-General's Unit for *'Transparency, Document Management and Access to Documents'*, to ensure an independent review of the replies given at the initial stage.

This Unit also manages the European Commission-wide internal IT system 'Electronic AccesS to European Commission Documents' (or 'EASE'). The Commission launched EASE in September 2022. It consists of two parts:

(1). a new online portal[4] allowing citizens to – among other functionalities – learn more about access to documents, submit initial and confirmatory applications, receive guidance, follow ongoing and past cases, manage their personal data, communicate with the Commission, receive the reply electronically, search for documents disclosed to other applicants, and;

(2). a new case-management system allowing the Commission staff to register, attribute and handle the applications for access to documents.

[1] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.
[2] Percentages are rounded to the nearest decimal place. The statistics reflect, *inter alia*, the number of applications received and replies provided in 2023. They provide more accurate data compared to previous years, following subsequent regular encoding corrections. For this reason, the figures provided in this report and the previous ones may slightly differ.
[3] https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/new-push-european-democracy_en
[4] https://ec.europa.eu/transparency/documents-request/home

EASE has replaced the old GestDem system and brings efficiency gains and contributes to making the whole process of submitting and handling applications for access to Commission documents more automatised, clearer, and transparent, both for citizens and the Commission.

The Commission departments are supported by the Historical Archives Service (HAS) in cases of access to documents applications relating to archives of previous Commissioners and their Cabinets. In 2023, HAS provided assistance in 213 cases[5], mostly to the Secretariat-General (42), the Directorate-General for Research and Innovation (19), the Legal Service (12), and the Directorates-General for Justice and Consumers (12), Internal Market, Industry, Entrepreneurship and SMEs (10), and Mobility and Transport (10).

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

The European Commission proactively publishes a wide variety of legal, policy, administrative and other documents on different websites and registers[6]. Many such documents are available on the Register of Commission documents (RegDoc), Register of delegated and implementing acts and other corporate registers managed by the Secretariat-General, while others can be found on websites managed by Directorates-General or EUR-Lex[7].

In 2023, 11,501 new documents were added to RegDoc (see Annex – Table 1), falling within the following categories: C, COM, JOIN, OJ, P, PV, SEC or SWD[8].

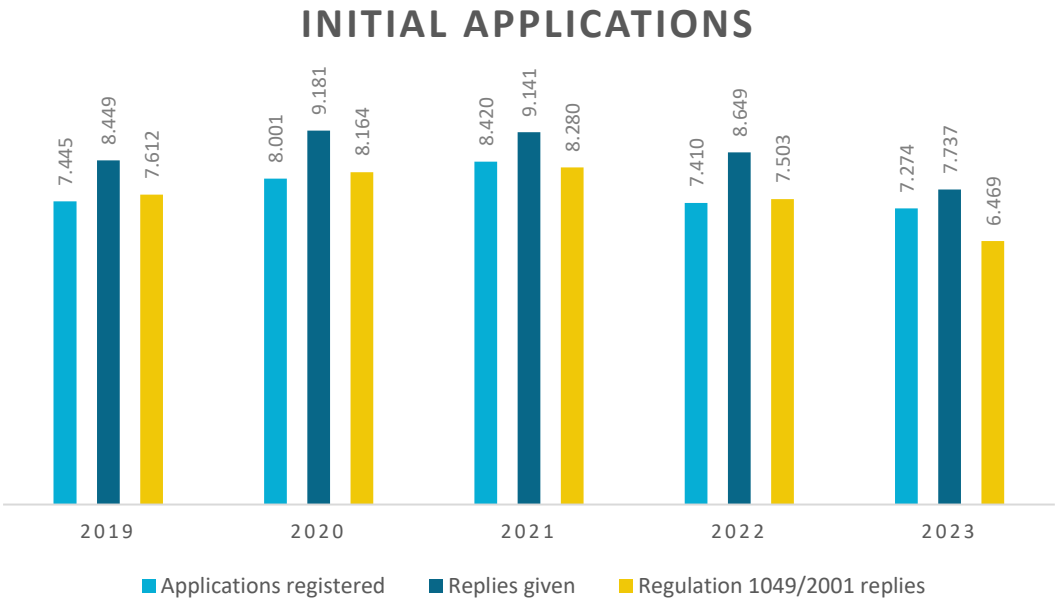
In 2023, the number of page views reached 7,613 in the case of the new 'Access to Documents' website on *Europa*[9], and 6,142 in the case of the new EASE public portal[10] (see Annex – Table 2).

[5] Compared to 145 in 2022.
[6] The list of sources is available, e.g. via https://commission.europa.eu/about-european-commission/service-standards-and-principles/transparency/access-documents/how-access-commission-documents_en.
[7] https://eur-lex.europa.eu/
[8] 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; P: Decisions by the President of the Commission; PV: Minutes of Commission meetings; SEC: Commission documents that cannot be classified in any of the other series; SWD: Commission staff working documents.
[9] https://commission.europa.eu/about-european-commission/service-standards-and-principles/transparency/access-documents/how-access-commission-documents_en
[10] https://ec.europa.eu/transparency/documents-request/home

3. ANALYSIS OF THE APPLICATIONS FOR ACCESS TO DOCUMENTS

3.1. Number of applications[11] (Annex – Tables 3 and 4)

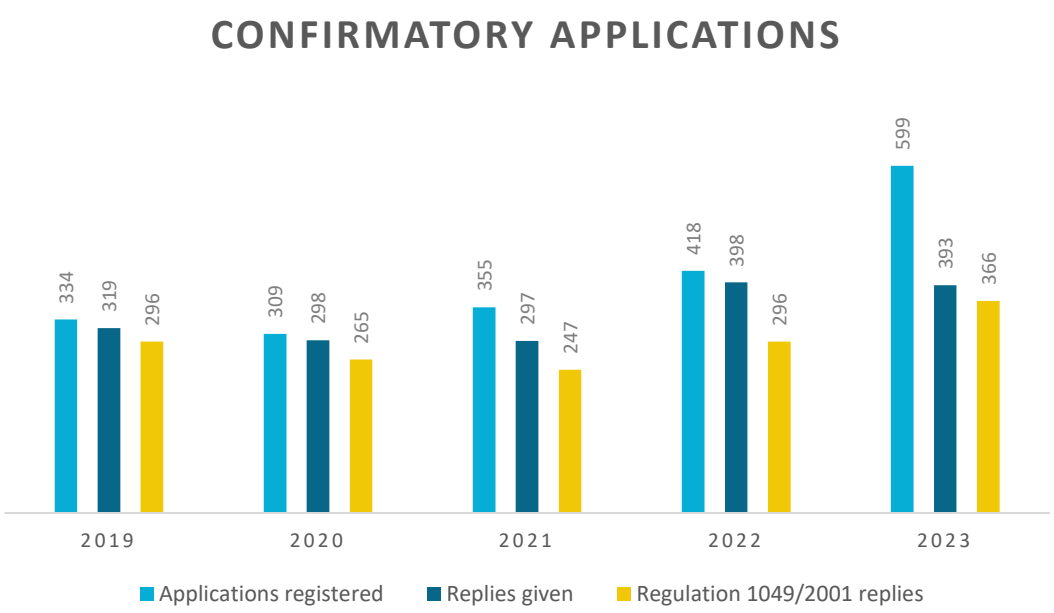
As illustrated by the graph below, in 2023, the number of initial applications reached 7,274. The European Commission provided 6,469 replies under Regulation (EC) No 1049/2001 and 7,737 replies in total[12].



As regards confirmatory applications, their number reached 599 in 2023, which reflects a striking increase of more than 43% compared to 2022. The European Commission provided 366 replies under Regulation (EC) No 1049/2001 and 393 replies in total.

[11] Statistics on the social and occupational profile and geographical origin of applicants are provided in tables 6 and 7 of the Annex.

[12] A single request can concern several documents held by different Commission departments and can consequently give rise to several different replies. On the other hand, several requests can be grouped together in some cases and give rise only to one single reply. The number of replies 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 closures following the applicants' failure to provide requested clarifications or to fulfil procedural requirements.

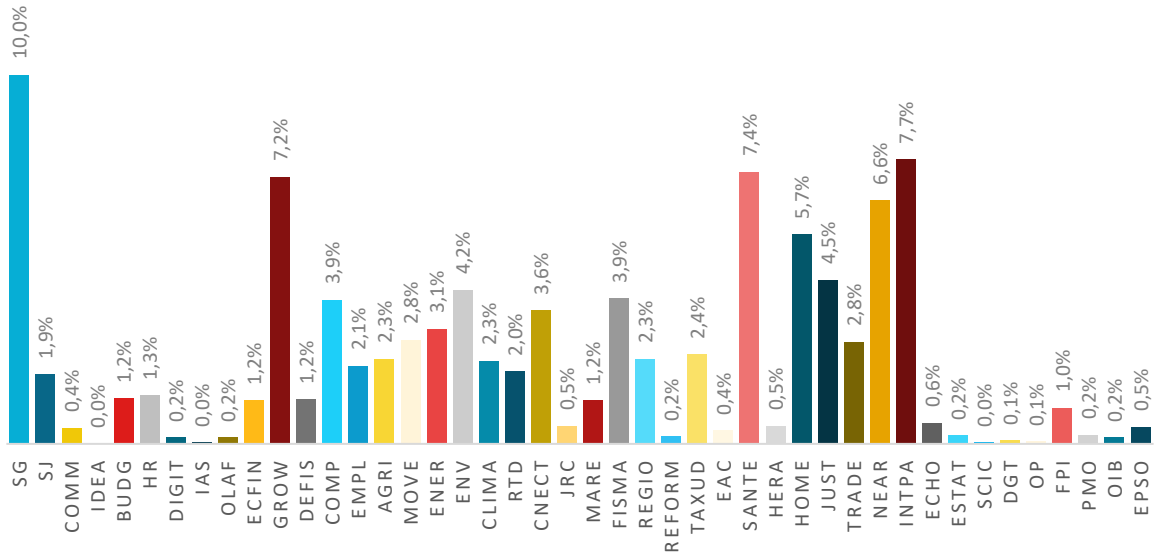


3.2. The applications received per Directorate-General or Service (Annex – Table 5)[13]

In 2023, the Secretariat-General received the highest proportion of initial applications (10%). It was followed by the Directorate-General for International Partnerships (7.7%), the Directorate-General for Health and Food Safety (7.4%), the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (7.2%), and the Directorate-General for Migration and Home Affairs (5.7%). The remaining European Commission departments each accounted for less than 5% of all initial applications.

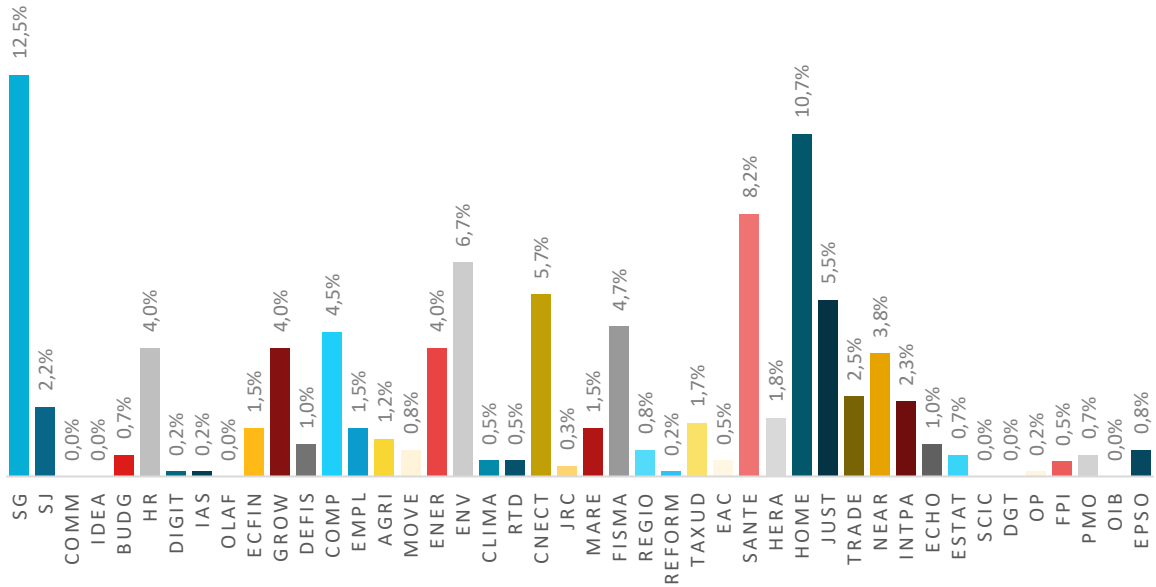
[13] The data pertaining to the European Anti-Fraud Office ('OLAF'), indicated below, concern exclusively applications for access to documents related to its administrative activities. Applications for access to documents concerning its investigative activities, due to the particular sensitivity of the 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. Since the creation of the European External Action Service (EEAS), only documents of the Service for Foreign Policy Instruments (FPI) are held by the European Commission. Furthermore, the statistics concerning FPI encompass some of the initial applications received by the European Peace Facility (EPF). The EPF is an off-budget instrument that enhances the EU's ability to act as a global security provider. Pursuant to Commission Decision C (2021) 2011, the European Commission accepted to implement the roles of an administrator, accounting officer and internal auditor for assistance measures of the EPF. 15 such initial applications were addressed to the Commission in its role as administrator for assistance measures in 2023. Confirmatory replies are adopted by the EPF's Facility Committee. Therefore, two confirmatory replies provided by the EPF at the confirmatory stage are not concerned by the present report.

INITIAL APPLICATIONS 2023



In 2023, the highest proportion of confirmatory applications was submitted in relation to cases handled at the initial stage by the Secretariat-General (12.5%). It was followed by the Directorate-General for Migration and Home Affairs (10.7%), the Directorate-General for Health and Food Safety (8.2%), the Directorate-General for Environment (6.7%), the Directorate-General for Communications Networks, Content and Technology (5.7%), and the Directorate-General for Justice and Consumers (5.5%). The remaining European Commission departments each accounted for less than 5% of all confirmatory applications.

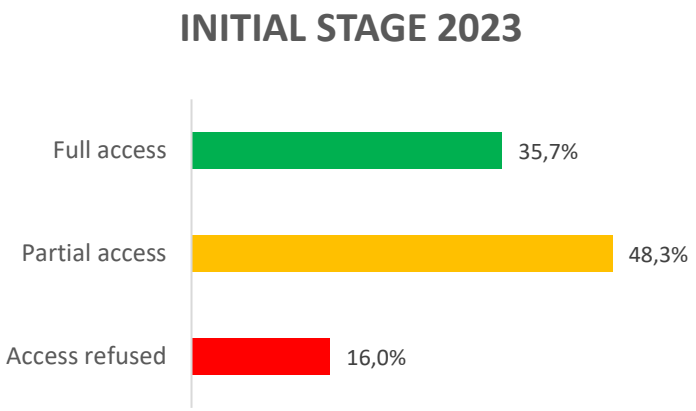
CONFIRMATORY APPLICATIONS 2023

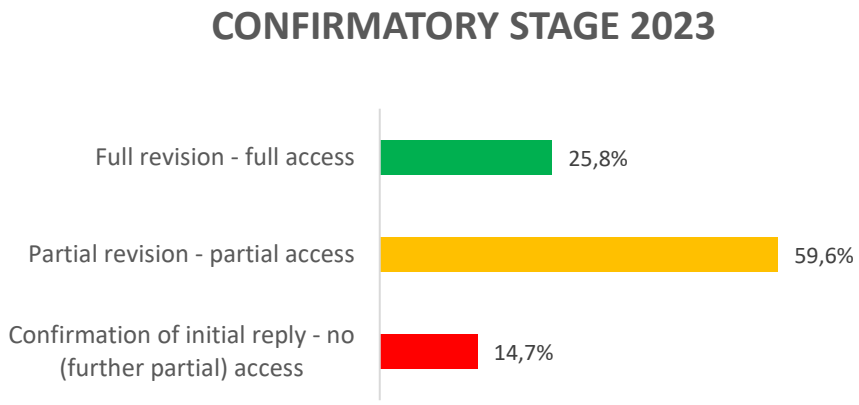


4. APPLICATION OF EXCEPTIONS TO THE RIGHT OF ACCESS[14]

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

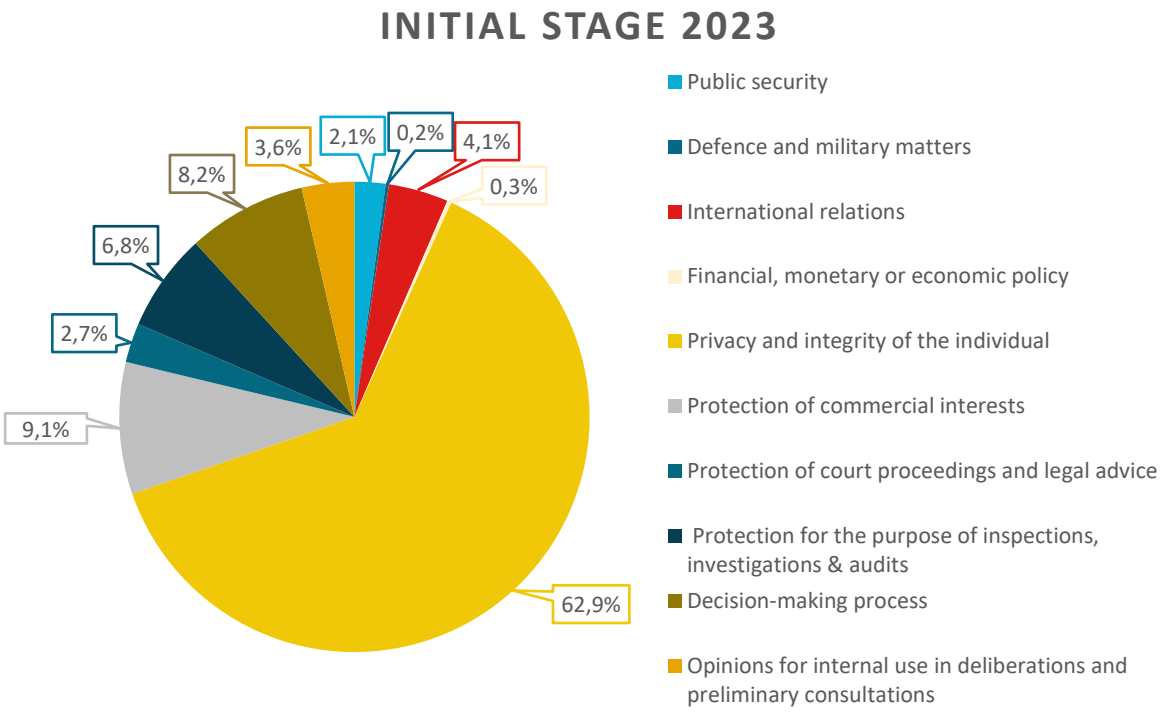
4.1. The level of access granted to the documents requested (Annex – Tables 8 and 9)

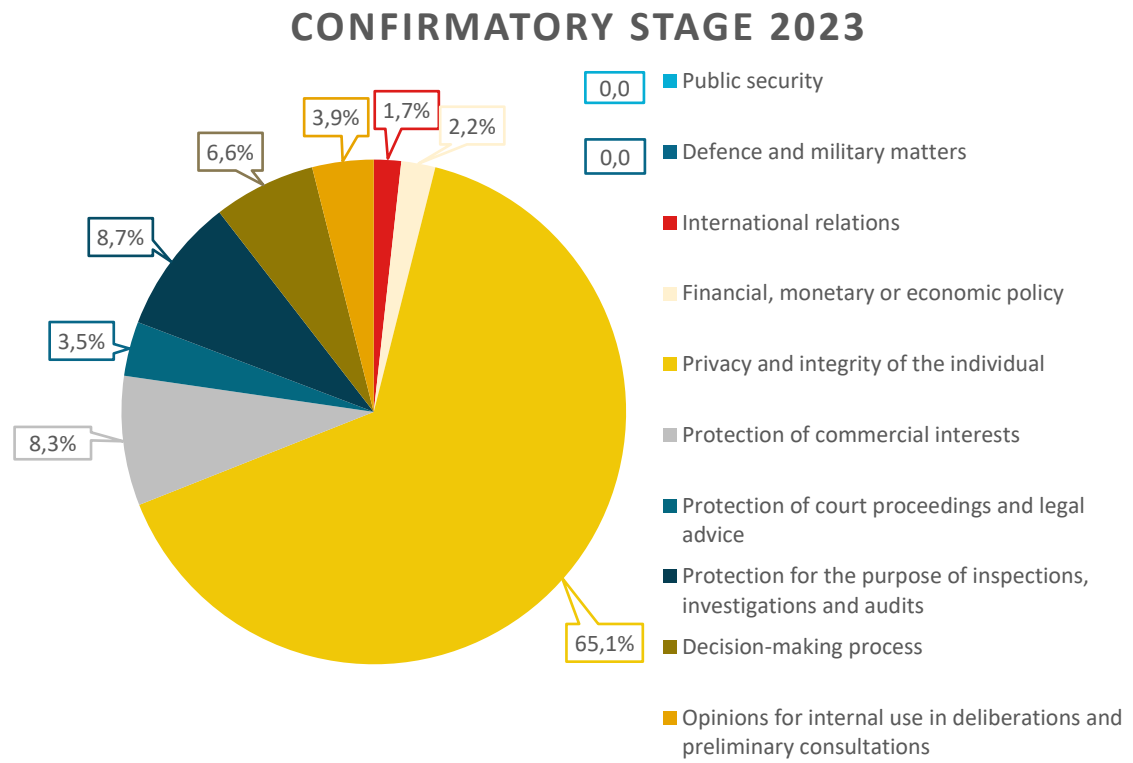




[14] Individual applications may concern several documents or entire files concerning a specific subject or procedure. The statistics in the previous annual reports, extracted from the decommissioned GestDem system, did not reflect the number of documents requested. Thanks to the EASE design, the figures in chapter 4 of the present report reflect the documents requested in cases handled in EASE and closed in 2023. Moreover, since the deployment of EASE in September 2022, the European Commission has continued to develop and improve this new IT system. As a result of this transitional period, the Commission departments may have encountered difficulties in uploading the documents concerned due to technical problems or adapting to the new system.

4.2. The exceptions applied to the documents requested[15] (Annex – Table 10)





[15] Based on Article 4 of Regulation (EC) No 1049/2001.

5. COMPLAINTS TO THE EUROPEAN OMBUDSMAN

In 2023, the European Ombudsman opened 96 new inquiries in cases involving the European Commission where access to documents was either the main or a subsidiary part of the complaint, and closed 78 complaints[16]. The European Ombudsman found instances of maladministration in 13 cases, of which 12 concern findings of maladministration in 2023[17]. The remaining 65 cases were closed without any remarks or suggestions for improvement.

6. NEW CASE-LAW ON ACCESS TO DOCUMENTS

6.1. The Court of Justice

In 2023, the Court of Justice handed down four judgments[18] 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.

It dismissed the appeal in three cases[19]. In one case, it partly set aside the judgment of the General Court, dismissed the appeal as to the remainder and referred the case back to the General Court for a ruling[20].

6.1.1. Clarifications of substantive rules

In 2023, the substantive clarifications issued by the Court of Justice essentially revolved around the application of the exceptions relating to the protection of legal advice[21] and of the decision-making process[22]. Furthermore, it brought further clarifications to the concept of overriding public interest[23].

[16] The statistics concern the European Ombudsman cases for all European Commission departments, except the European Anti-Fraud Office.

[17] Cases 6/2021 (https://www.ombudsman.europa.eu/en/case/en/60425); 2/2022 (https://www.ombudsman.europa.eu/en/case/en/60766); 1129/2022 (https://www.ombudsman.europa.eu/en/case/en/61897); 1203/2022 (https://www.ombudsman.europa.eu/en/case/en/61954); 1378/2022 (https://www.ombudsman.europa.eu/en/case/en/62144); 1731/2022 (https://www.ombudsman.europa.eu/en/case/en/62502); 2000/2022 (https://www.ombudsman.europa.eu/en/case/en/62765); 1933/2022 (https://www.ombudsman.europa.eu/en/case/en/62702); 2206/2022 and 2208/2022 (https://www.ombudsman.europa.eu/en/case/en/62978); 1053/2023 (https://www.ombudsman.europa.eu/en/case/en/64113); and 1945/2023 (https://www.ombudsman.europa.eu/en/case/en/65012).

[18] Judgments of 7 September 2023, *Patrick Breyer* v *European Research Executive Agency (REA)*, C-135/22 P, EU:C:2023:640; of 8 June 2023, *Council of the European Union* v *Laurent Pech*, C-408/21 P, EU:C:2023:461; of 9 November 2023, *XC* v *European Commission*, C-527/21 P, EU:C:2023:850; of 27 April 2023, *Aeris Invest Sàrl* v *European Central Bank*, C-782/21 P, EU:C:2023:345.

[19] Judgments in *Patrick Breyer* v *European Research Executive Agency (REA)*, C-135/22 P, *op.cit*.; *Council of the European Union* v *Laurent Pech*, C-408/21 P, *op.cit*.; *Aeris Invest Sàrl* v *European Central Bank*, C-782/21 P, *op.cit*.

[20] Judgment in *XC* v *European Commission*, C-527/21 P, *op.cit*.

[21] Judgment in *Council of the European Union* v *Laurent Pech*, C-408/21 P, *op.cit*. Paragraphs 35–39, 55–56, 61, 64–68, 70–73.

[22] Judgment in *Council of the European Union* v *Laurent Pech*, C-408/21 P, *op.cit*. Paragraphs 86, 88, 91.

[23] Judgments in *Patrick Breyer* v *European Research Executive Agency (REA)*, C-135/22 P, *op.cit*. Paragraphs 94–95, 105–106; *Aeris Invest Sàrl* v *European Central Bank*, C-782/21 P, *op.cit*. Paragraphs 37–42, 48.

6.2. The General Court

In 2023, the General Court handed down 14 judgments or orders in proceedings to which the European Commission was a party in relation to decisions concerning the right of public access to documents under Regulation (EC) No 1049/2001[24], compared to 26 in 2022.

The action for annulment was dismissed in five cases[25]. In two cases, the General Court dismissed the application for leave to intervene lodged by third parties[26]. In two cases, it ordered the removal of the case from the Register of the General Court following the applicants' requests to discontinue proceedings[27]. In one case, it dismissed the action in part on the ground of manifest lack of competence (inasmuch as it requested the General Court to order the Commission to provide access to the documents requested), and in part as manifestly inadmissible (inasmuch as it targeted an initial decision), and held that there was no longer any need to adjudicate on the application for leave to intervene lodged by third parties[28]. In one case, it dismissed the application for interim measures[29].

In two cases, the General Court annulled the decision of the European Anti-Fraud Office and dismissed the action as to the remainder[30]. In one case, it declared that there was no longer any need to adjudicate on the application for annulment of the implied decision refusing access, annulled the decision of the European Commission to the extent that it refused access to the individual votes of the representatives of the Member States on the basis of the second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 and dismissed the action as to the remainder[31].

[24] Orders of 5 October 2023, *Matina Stevi and The New York Times* v *European Commission*, T-36/23, EU:T:2023:608; of 5 October 2023, *Matina Stevi and The New York Times* v *European Commission*, T-36/23, EU:T:2023:609; of 8 September 2023, *MBDA France* v *European Commission*, T-154/23; of 28 November 2023, *Roberto Acampora and Others* v *European Commission*, T-423/23, EU:T:2023:770; of 28 March 2023, *Paola Primicerj* v *European Commission*, T-612/22; of 15 December 2023, *Shopper Union France and Xavier Azalbert* v *European Commission*, T-1071/23 R, EU:T:2023:806; and judgments of 15 February 2023, *Asesores Comunitarios, SL* v *European Commission*, T-77/22, EU:T:2023:69; of 14 June 2023, *Covington & Burling LLP and Bart Van Vooren* v *European Commission*, T-201/21, EU:T:2023:333; of 1 February 2023, *ClientEarth AISBL* v *European Commission*, T-354/21, EU:T:2023:34; of 12 July 2023, *Eurecna SpA* v *European Commission*, T-377/21, EU:T:2023:398; of 12 July 2023, *Michele Vendrame* v *European Commission*, T-379/21, EU:T:2023:399; of 15 March 2023, *Giorgio Basaglia* v *European Commission*, T-597/21, EU:T:2023:133; of 6 September 2023, *Foodwatch eV* v *European Commission*, T-643/21, EU:T:2023:519; of 26 July 2023, *Troy Chemical Company BV* v *European Commission*, T-662/21, EU:T:2023:442.

[25] Judgments in *Asesores Comunitarios, SL* v *European Commission*, T-77/22, *op.cit.*; *ClientEarth AISBL* v *European Commission*, T-354/21, *op.cit.*; *Giorgio Basaglia* v *European Commission*, T-597/21, *op.cit.*; *Foodwatch eV* v *European Commission*, T-643/21, *op.cit.*; *Troy Chemical Company BV* v *European Commission*, T-662/21, *op.cit.*

[26] Orders in *Matina Stevi and The New York Times* v *European Commission*, T-36/23, EU:T:2023:608, *op.cit.*; *Matina Stevi and The New York Times* v *European Commission*, T-36/23, EU:T:2023:609, *op.cit.*

[27] Orders in *MBDA France* v *European Commission*, T-154/23, *op.cit.*; *Roberto Acampora and Others* v *European Commission*, T-423/23, *op.cit*.

[28] Order in *Paola Primicerj* v *European Commission*, T-612/22, *op.cit*.

[29] Order in *Shopper Union France and Xavier Azalbert* v *European Commission*, T-1071/23 R, *op.cit*.

[30] Judgments in *Eurecna SpA* v *European Commission*, T-377/21, *op.cit.*; *Michele Vendrame* v *European Commission*, T-379/21, *op.cit*.

[31] Judgment in *Covington & Burling LLP and Bart Van Vooren* v *European Commission*, T-201/21, *op.cit*.

6.2.1. Clarifications of substantive rules

In 2023, the substantive clarifications issued by the General Court essentially revolved around the application of the exceptions relating to the protection of international relations[32], of the financial, monetary or economic policy[33], of court proceedings[34], and of the decision-making process[35]. Furthermore, the General Court brought further clarifications to the concepts of overriding public interest[36] and of general presumption of confidentiality[37].

6.2.2. Clarifications of procedural rules

The main procedural issues addressed in 2023 by the General Court concerned the obligations concerning the retention of documents[38] and the concept of fair solution[39].

6.3. New Court cases introduced against the European Commission in 2023

In 2023, 19 cases involving the European Commission were brought before the EU Courts in relation to decisions concerning the right of public access to documents under Regulation (EC) No 1049/2001, compared to 11 in 2022.

15 of them concern actions introduced before the General Court[40], three of which were already closed in 2023 by the orders mentioned above[41].

In parallel, four appeals were introduced before the Court of Justice against a judgment or order of the General Court in cases where the European Commission was a party to the proceedings[42].

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[32] Judgment in *Foodwatch eV* v *European Commission*, T-643/21, *op.cit*. Paragraphs 57-59, 65-67, 105-111, 113-116.
[33] Judgment in *Asesores Comunitarios, SL* v *European Commission*, T-77/22, *op.cit*. Paragraphs 57-66.
[34] Judgment in *Troy Chemical Company BV* v *European Commission*, T-662/21, *op.cit*. Paragraphs 57-59, 64-69, 78.
[35] Judgment in *Covington & Burling LLP and Bart Van Vooren* v *European Commission*, T-201/21, *op.cit.* Paragraphs 59, 63-68, 71-73.
[36] Judgment in *ClientEarth AISBL* v *European Commission*, T-354/21, *op.cit*. Paragraphs 93-94.
[37] Judgment in *ClientEarth AISBL* v *European Commission*, T-354/21, *op.cit*. Paragraphs 44-46, 64-68, 73-75.
[38] Judgment in *Giorgio Basaglia* v *European Commission*, T-597/21, *op.cit.* Paragraphs 30-35.
[39] Judgment in *Giorgio Basaglia* v *European Commission*, T-597/21, *op.cit.* Paragraphs 59, 69-72, 79, 85, 90-97, 112.
[40] Cases *Matina Stevi and The New York Times* v *European Commission*, T-36/23, *op.cit.*; *PAN Europe* v *European Commission*, T-104/23; *Rems Kargins* v *European Commission*, T-110/23; *eClear AG* v *European Commission*, T-127/23; *MBDA France* v *European Commission*, T-154/23, *op.cit.*; *Roberto Acampora and Others* v *European Commission*, T-261/23; *British American Tobacco Polska Trading sp. z o.o.* v *European Commission*, T-311/23; *Roberto Acampora and Others* v *European Commission*, T-423/23, *op.cit.*; *YZ* v *European Commission*, T-537/23 AJ; *Mylan Ireland Ltd* v *European Commission*, T-585/23; *Sara Soares* v *European Commission*, T-606/23; *Shopper Union France and Xavier Azalbert* v *European Commission*, T-1071/23; *Shopper Union France and Xavier Azalbert* v *European Commission*, T-1071/23 R, *op.cit.*; *Smart Kid S.A.* v *European Commission*, T-1130/23; *Huhtamaki Holding Sàrl* v *European Commission*, T-1145/23.
[41] Cases *MBDA France* v *European Commission*, T-154/23, *op.cit.*; *Roberto Acampora and Others* v *European Commission*, T-423/23, *op.cit.*; *Shopper Union France and Xavier Azalbert* v *European Commission*, T-1071/23 R, *op.cit*.
[42] Cases *Validity Foundation - Mental Disability Advocacy Centre* v *European Commission*, C-51/23 P; *ClientEarth AISBL* v *European Commission*, C-249/23 P; *European Commission* v *Covington & Burling, Bart Van Vooren*, C-540/23 P; *BonSens.org* v *Stevi and Others*, C-634/23 P(I).