



EUROPEAN RESEARCH EXECUTIVE AGENCY (REA)

The Director

Brussels,  
REA [REDACTED]

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

The right to ask for EU documents is set out in the EU treaties and in the Charter of Fundamental Rights. The right of access to documents (AtD) is part of the fundamental objective of making decision-making as open as possible and as close as possible to the citizens (Art. 1 TEU). However, this right has its limits: the access to documents Regulation (EC) 1049/2001 lays down the general principles and the limits of this fundamental right.

Requests for access can be refused indeed, but only for specific reasons, which are to be considered as exceptions to the transparency principle and are therefore strictly defined by the jurisprudence originating from the use of listed exceptions under Article 4 of the afore-mentioned Regulation.

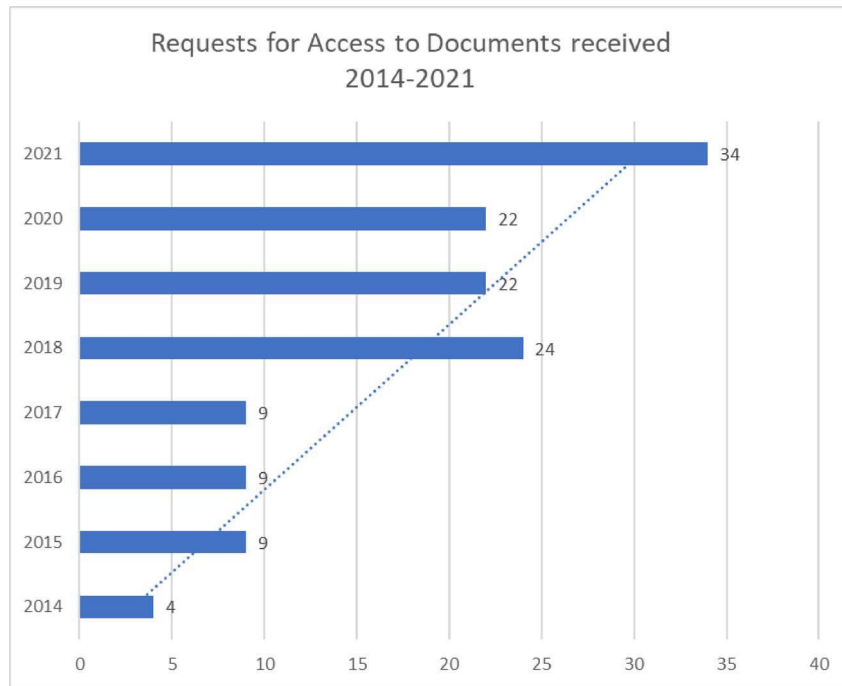
To comply with its obligations under Article 17 of the same Regulation, this report presents annual statistics in relation to the application of the right of access to documents within REA in 2021.

Before focusing on last year's data, we offer the reader a multi-annual overview.

## **I. Multi-annual overview**

### **A. Evolution of number of requests:**

The number of requests for AtD constantly increases over the years, and grew by 55% in comparison to 2020. This is superior by 50% to the average number of requests per year (22) over the 2014-2021 period.

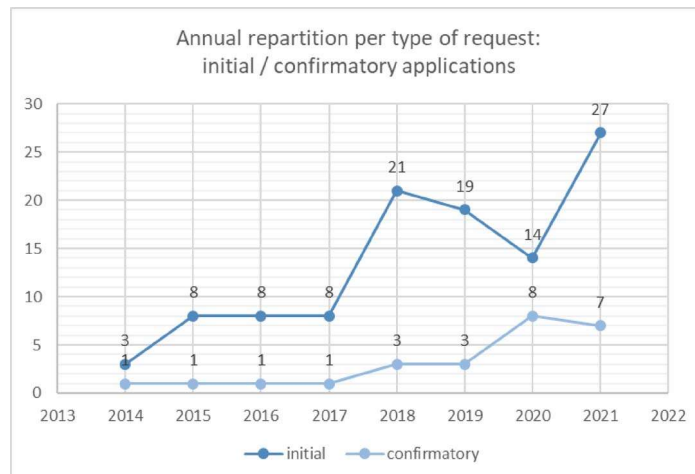


### B. Type of requests: repartition between initial and confirmatory applications

When an EU institution receives an access to documents request, it has 15 working days to respond. This is known as an initial request. If the person is not satisfied with the response, he/she can ask the institution to review the decision, by making a confirmatory application. The institution then has another 15 working days to answer.

Requests received (2018-2021)	Initial requests	Confirmatory requests
102	81	21
	79%	21%

The repartition between initial and confirmatory requests has been stable over the years: in one out of five access to documents file, a confirmatory application is requested.



### C. Requestors (2014-2021)

Number of Requests per Requestor	Number of Requestors	Total Requests
1	50	50
2	11	22
3	8	24
4	3	12
5	2	10
11	1	11
<b>31/12/2021</b>		<b>129</b>

Read: 50 requestors formulated one request for AtD, while one requestor (freelance investigation journalist) formulated 11 requests for AtD.

Overall, 75 requestors contacted REA to get access to documents since 2014. Requestors with the highest number of requests for AtD are three investigation journalists, one MEP, one NGO-activist lawyer and one researcher.

## II. Focus on year 2021 – analysis of the 34 requests for AtD received

### A. Types of requests:

	Requests received in 2021
Normal	26
Wide scope	8
<b>Total</b>	<b>34</b>

In the event of an application relating to a very long document or to a very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution. This is known as a “wide scope” request; such requests require additional time as they aim at finding an agreement with the requestor on a reasonable scope, and generally lead nevertheless to analysing a significant number/volume of documents<sup>1</sup>.

The time to assess (non-wide-scope) requests was **22 working days** in 2021; an extension of the deadline is systematically requested by REA, in case of late answer from consulted third-parties or particularly voluminous requests. There was no delayed reply in 2021.

When considering a reasonable amount of documents within the final scope of the request, taking into account its complexity, one generally considers 30 pages as

<sup>1</sup> Note that the date of such an agreement is not extractable from the Legal Register, which is based on the deadline to provide the requested documents; this is the reason for which there are currently no statistics on the time to reply to wide-scope requests.

reasonable to be assessed per day (time to analyse and expunge data not to be disclosed). The number of pages assessed in 2021 is not available.

However, in 2021, more than 100 documents were analysed in the framework of the afore-mentioned eight wide-scope requests, out of a total number of 320 assessed documents in 2021.

## B. Requestors: status and country of origin

a) In 2021, requests emanated from the following requestors:

Requestor's Specific status	Number of requests
Project manager	1
Staff	1
Activist	2
Attorney at law	2
MEP	2
Rejected COO	2
Researcher	2
Academic researcher	3
Researcher - ex-MSCA fellow	5
Investigative journalist	14
<b>Total</b>	<b>34</b>

The repartition of the corresponding requests can be presented as follows:

Single requests	Number or requestors	Total
1	11	11
Mutiple requests	Number or requestors	
2	4	8
3	2	6
4	1	4
5	1	5
	<b>Grand Total</b>	<b>34</b>

Read: 11 requestors formulated one request for AtD, while one requestor formulated five requests for AtD.

Requestors having formulated the higher number of requests for AtD as listed in the last three rows are three investigation journalists and one Researcher - ex-MSCA fellow.

b) The requestor's country of origin is based on the postal address indicated within the scope of the AtD request at the time of the request and can be split as follows:

Country of origin	Number of requests
France	5
Germany	3
Ireland	7
Italy	3
Netherlands	1
Norway	1
Poland	1
Slovakia	1
Spain	5
Sweden	1
Switzerland	1
United Kingdom	5
<b>Total</b>	<b>34</b>

### C. Targeted information:

Targeted areas	Number of requests
H2020/FP7 - MSCA	12
MSCA-IF	5
MSCA-ITN	5
MSCA-RISE	2
H2020/FP7 - SECURITY	9
FP7 - SME legacy	4
H2020 - other	7
All programs	1
Staff matters	1
<b>Total</b>	<b>34</b>

### D. REA's replies

In principle, all documents of the institutions should be accessible to the public. However, certain public and private interests should be protected by way of exceptions.

The institutions should be entitled to protect their internal consultations and deliberations where necessary to safeguard their ability to carry out their tasks. In assessing the exceptions, the institutions should take account of the principles in Community legislation concerning the protection of personal data, in all areas of Union activities.

#### a) Restrictions to the right of access to documents:

These restrictions stem from the exceptions listed within Article 4 of Regulation 1049/2001; some are absolute exceptions, and some are relative exceptions. Absolute exceptions are easier to invoke as they do not have to be jeopardized, whereas the

relative ones might be put into question, in case there is an overriding public interest in the disclosure.

Absolute exceptions:

- art. 4.1(a) refers to the public interest – public security, defence and military matters, international relations, financial, monetary or economic policy of the Community or a MS,
- art. 4.1(b) refers to privacy and integrity of the individual - protection of personal data.

Relative exceptions:

- art. 4.2 refers to commercial interest, Court proceedings, purpose of inspections,
- art. 4.3 refers to the decision-making process, before or after a decision is taken.

On this basis, the institutions have the possibility to either refuse access to a document, or to grant access to it after having expunged the information to be protected. As a result of a detailed analysis of a significant number of responses provided over the year (22/34), the analysis shows that the 320 documents concerned were released as follows:

Assessed documents	Full disclosure	Partial disclosure	Non-disclosure
	15%	56%	29%
	71%		29%

Upon disclosure in the framework of an AtD request, disclosed documents are deemed to be publicly available this is the case for the vast majority of documents requested (71%).

Partial disclosure and non-disclosure result from an in-depth analysis of each document subject of the request.

**b) Grounds for partial and non-disclosure:**

	Privacy and integrity of the individual - 4.1(b)	Commercial interests - 4.2	Decision-making process BEFORE a decision is taken - 4.3	Decision-making process AFTER a decision was taken - 4.3
Grounds for partial disclosure	100%	57%	2%	1%
Grounds for non-disclosure	96%	82%	0%	17%

This table summarizes the legal basis for which only partial disclosure or non-disclosure occurred (occurrence of argument used).

**c) Documents subject to replies:**

Type of documents requested	
Proposals	2.65%
GPR	2.27%
GA and Amendments	18.18%
Annexes to GA	7.58%
Deliverables	6.44%
Letters, mails, internal documents	23.48%
Reports	28.03%
FCA, calculation sheets	3.03%
Non categorised documents	8.33%
Total	100.00%

### III. The European Ombudsman’s strategic initiative on AtD - SI/7/2021/DL dated 27/10/2021

Transparency and access to documents inquiries account for around one quarter of the European Ombudsman’s inquiries each year. In this respect, the Ombudsman has published a [guide](#) for the EU administration on how it can better implement its obligations regarding the public’s right to access documents. REA, with the current report, covers recommendation number six, regarding the need to publish annual statistics.

### IV. Court Case T-158/19 BREYER versus REA

By Judgment of the **General Court** of 15 December 2021 in Case T-158/19 **BREYER versus REA**, the Court annulled the decision of REA of 17 January 2019 to partly refuse the requestor’s confirmatory request for access to deliverables, all documents concerning the project “iBorderCtrl - Intelligent Portable Border Control System”. Following a detailed analysis of the documents, the Court confirmed that REA was right to have taken into account the protection of **confidentiality** and acknowledged that the consortium members may have **legitimate commercial interests** linked to the project results. However, the Court found that some parts of the documents of which the disclosure had been refused by REA did not fall within the commercial interests of the consortium members. **No overriding public interest** was demonstrated to justify a full disclosure of the documents either.

REA Legal Affairs is analysing the implications of this judgement and its implications on future requests for AtD.

The Court’s [summary of the case](#) is fully available on e-Curia.

- e-signed -  
Marc TACHELET

c.c.:

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