



Brussels, 9.8.2021  
COM(2021) 459 final

## **REPORT FROM THE COMMISSION**

**on the application in 2020 of Regulation (EC) No 1049/2001 regarding public access to  
European Parliament, Council and Commission documents**

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Transparency is one of the priorities of the von der Leyen Commission that underpins all actions. One of its essential elements is the right to request and obtain access to documents held by European institutions.

This citizen's right stems from the democratic, open and independent nature of the European administration. Its principles are enshrined in Article 42 of the Charter of Fundamental Rights of the European Union and Article 15(3) of the Treaty on the Functioning of the European Union. Regulation (EC) No 1049/2001 and case law of the Court of Justice give full effect to them and play a central role in ensuring that decisions of Institutions are taken as openly and as closely to the citizen as possible.

Faced with the challenges of the pandemic in 2020, the Commission strived to safeguard the effectiveness of citizens' right of access to documents held by the institutions. The present annual report, drafted in accordance with Article 17(1) of Regulation (EC) No 1049/2001, identifies the key trends, challenges and features of Commission policy, action and practice related to access to documents. It also provides the findings of the European Ombudsman concerning the European Commission's implementation of the Regulation and the rulings handed down by the EU Courts.

## **I. Access to documents**

In 2020, the European Commission provided access to a wide range of documents in its possession, following specific requests submitted under the Regulation. This access complemented the institution's proactive publication of a wealth of information and documentation on its various registers and webpages. The year 2020 was an unprecedented one for the European Commission. In the context of the COVID-19 pandemic, in line with the drastic containment measures adopted by the Member States<sup>1</sup>, the European Commission put in 2020 almost its entire staff, except for staff members performing critical/essential tasks, into telework mode until further notice.

This report provides an overview of the European Commission's implementation of the Regulation in the year 2020. It is based on statistical data, which are summarised in Annex<sup>2</sup>.

The statistics reflect the number of applications received and replies provided in 2020. They further provide more accurate data as regards the statistics retrieved for the previous years, following subsequent regular encoding corrections<sup>3</sup>. However, the statistics do not reflect the number of documents requested or (partially) disclosed, which were far more numerous. Although applicants may ask for access to a single document, they more frequently request access to a multitude of documents, or even to entire files concerning a specific subject or procedure.

In brief, the statistics show that the requested documents were fully or partially disclosed in almost 81% of the 8,001 cases at the initial stage, and wider or even full access was granted in 37.4% of the 265 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 all circumstances, including in the unprecedented pandemic situation which characterised the year 2020.

### ***Impact of COVID-19***

The COVID-19 pandemic shifted the institution's focus to coordinating the Union's immediate response to the pandemic and to developing a comprehensive economic recovery plan.

The European Commission negotiated with pharmaceutical companies on behalf of the Member States of the European Union, leading to the initial signature of six agreements, with further exploratory talks with additional vaccine manufacturers concluding in 2020 and early 2021.

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<sup>1</sup> In Belgium, the Government requested that organisations such as the European Commission implement strict teleworking policies, see 'Arrêté ministériel portant des mesures d'urgence pour limiter la propagation du coronavirus COVID-19' of 28 October 2020 (subsequently updated): [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&table\\_name=loi&cn=2020102801](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2020102801).

<sup>2</sup> Unless otherwise indicated, the statistics presented in this Report are based on figures extracted from the European Commission IT applications on 31 December 2019, as updated following subsequent encoding corrections. Percentages in the narrative part of the Report are rounded to the closest decimal.

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

In parallel, the European Commission took a series of actions to tackle COVID-19 disinformation and urged all actors, including online marketplaces and social media, to help in this fight<sup>4</sup>.

In the framework of this unprecedented pandemic situation, the European Commission abided by its guiding principles for its functioning, namely: transparency, collegiality and efficiency<sup>5</sup>.

The European Commission strived to create the environment required to support a secure manufacturing network and optimisation for the production of vaccines against COVID-19. For this purpose, the European Commission agreed with all Member States of the European Union to conclude, on behalf and in the name of the Member States, Advance Purchase Agreements with vaccine manufacturers with the objective of procuring vaccines for the purposes of combatting the COVID-19 pandemic at Union level, for everyone, in safe conditions and at a fair price.

In an effort to ensure as complete as possible transparency of the process for the purchase of COVID-19 vaccines, the European Commission strived to publish timely information about the signature of the contracts and the state of play of the negotiations with vaccine manufacturers. Against this background, the Commission engaged in consultations with vaccines manufacturers involved in that process about the possibility to disclose contracts concerning such purchase.

As a result, redacted versions of agreements for the purchase of COVID-19 vaccines have been progressively published on a proactive basis.

Yet, the objective of procuring COVID-19 vaccines from commercial manufacturers requires that some legitimate interests that could be undermined by the disclosure of documents are duly protected, in particular sensitive business information or the capacity of the Commission to negotiate with the commercial manufacturers a diverse portfolio of contracts.

### ***Resources***

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, ‘access to documents coordinators’ are usually assisted by some 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 the Secretariat-General.

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<sup>4</sup> [Tackling coronavirus disinformation | European Commission \(europa.eu\)](https://ec.europa.eu/info/sites/info/files/working-methods.pdf).

<sup>5</sup> See Communication from the President to the Commission of 1 December 2019, ‘The Working Methods of the European Commission’, P(2019) 2, available at: <https://ec.europa.eu/info/sites/info/files/working-methods.pdf>.

A specific team within the Secretariat-General's Unit for *Transparency, Document Management and Access to Documents* deals with confirmatory requests, 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 the Legal Service, ensuring the coordination and uniform implementation of the detailed rules for the application of Regulation (EC) No 1049/2001.

The Unit also manages the European Commission-wide IT system for handling initial and confirmatory requests for access to documents: Gestdem. In 2020, the Commission continued to develop further its future system for handling access requests through an electronic online portal, namely 'Electronic Access to European Commission Documents' (or 'EASE').

The EASE project aims to create a one-stop-shop, electronic and fully integrated IT solution for submitting and handling applications for access to Commission documents. Its ultimate goal is bringing the EU decision-making process closer to citizens. EASE is scheduled to go into production mid-2021. It consists of two parts, namely:

- (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.

In addition, in cooperation with the Directorate-General for Informatics, the project team continued working in 2020 on the Artificial Intelligence Study, the aim of which is to identify 'use cases' where artificial intelligence techniques could simplify the handling of applications for access to documents.

In conclusion, the new EASE project should provide increased transparency and bring citizens closer to the EU decision-making process.

## **1. 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.

In 2020, 19,849 new documents were added to the Register of Commission Documents (see Annex – Table 1), falling within the C, COM, JOIN, OJ, PV, SEC or SWD categories<sup>6</sup>. This represents approximately an 8.2% increase compared to 2019.

The ongoing project ‘Revamp of the Register of Commission Documents’ which aims at transforming the Register of Commission Documents into the main publication tool of the institution’s documents continued to progress<sup>7</sup>.

In 2020, the number of visitors of the ‘Access to Documents’ website on *Europa*<sup>8</sup> more than doubled, with 14,716 visitors compared to 6,642 in the previous year. Similarly, the number of pages viewed increased by almost 141.6%, with 24,429 pages viewed (see Annex – Table 2)<sup>9</sup>.

Both platforms remain useful search tools enabling citizens to participate more closely and actively in the European Commission’s decision-making process as well as promoting the policy on access to documents and broader transparency in general.

In 2020, the European Commission continued to publish proactively a wide range of information and documents and in a user-friendly way. Simultaneously, the institution constantly sought to explore new tools designed to further the transparency of its overall activities and involve citizens in the democratic process. Notwithstanding the COVID-19 pandemic, the European Commission managed in 2020 to deploy targeted efforts to enhance further the transparency of all its core activities.

A few examples illustrative of this endeavour are listed below.

### ***Publication of mission expenses of the Members of the Commission***

In 2020, the Commission has continued to publish on the Europa website an overview of mission expenses per Member of the Commission every two months, covering all missions, in accordance with Article 6 of the Code of Conduct for the Members of the European Commission.

Such publication provides transparency both on the costs and the purpose of the respective missions. A link towards the relevant information can be found on each Commissioner’s respective webpage.

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<sup>6</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>7</sup> At the time of the drafting of this Report, the updated version of the Register became operational since 17 May 2021 and enlarged its scope so that documents available on other places will also be searchable via it.

<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.

## ***Brexit***

The United Kingdom left the European Union on 31 January 2020, following the ratification of the Withdrawal Agreement by the EU and the United Kingdom.

Throughout the negotiating process, the Commission, as European Union negotiator, remained committed to ensuring a maximum level of transparency. For this reason, Commission negotiating documents shared with EU Member States, the European Council, the European Parliament, the Council, national parliaments, and the United Kingdom, were regularly released to the public, together with other documents informing the public of the state of play of the negotiations and the issues discussed<sup>10</sup>.

## ***Trade policy***

Trade policy affects all EU citizens. Therefore, the European Commission listens to input from Union citizens so that EU policy accurately reflects our society's values and interests as a whole. Accordingly, this policy is built with EU citizens' input, which is made before, during and after the negotiation process.

In 2020, transparency and engagement with the public remained essential features within the trade policy in order to ensure democracy, public trust and accountability. Information on 84 meetings of committees and dialogues set up in the framework of its trade agreements were published in 2020, together with 34 negotiation round reports; and information on 16 meetings of Expert Groups<sup>11</sup>.

Moreover, for the first time, 11 Commission decisions on Member States' Bilateral Investment Treaties, and a non-sensitive summary record of a Trade Defence Instruments committee were published. In addition, 17 Civil Society Dialogue meetings were organised to update on ongoing individual negotiations, or to discuss draft reports of SIAs and the overall trade agenda<sup>12</sup>.

These measures build on the pro-active transparent approach to trade policy already pursued by the European Commission.

The above-mentioned examples of proactive publication constitute only a few instances illustrative of the institution's efforts to boost transparency within the broader meaning of the term<sup>13</sup>.

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<sup>10</sup> [https://wayback.archive-it.org/11980/20201223015019/https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/publications-and-news/documents-related-work-task-force-relations-united-kingdom\\_en](https://wayback.archive-it.org/11980/20201223015019/https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/publications-and-news/documents-related-work-task-force-relations-united-kingdom_en)

<sup>11</sup> [https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc\\_159448.pdf](https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc_159448.pdf).

<sup>12</sup> *Ibid.*

<sup>13</sup> In addition, the Institution ensures the transparency of (i) the Commission Members' contacts with stakeholders and civil society. (For more information, see [https://ec.europa.eu/transparencyregister/public/staticPage/displayStaticPage.do?locale=en&reference=ANNUAL\\_REPORT](https://ec.europa.eu/transparencyregister/public/staticPage/displayStaticPage.do?locale=en&reference=ANNUAL_REPORT)); (ii) post term of office occupations of the former Members of the Commission. Moreover, the European Commission publishes annual reports on the application of the Code of Conduct for the Members of the European Commission (the second annual report is available at:



## 2. LEGAL FRAMEWORK—DEVELOPMENTS

There are currently two pending proposals for amending Regulation (EC) No 1049/2001, namely:

- the 2008 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, COM(2008)229 final 2008/0090 (COD)<sup>14</sup>; and
- the 2011 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, COM(2011)137 final 2011/0073(COD)<sup>15</sup>.

The first proposal of 2008, also known as the ‘Recast proposal’ as it consisted in a substantial recast of the Regulation, was introduced by the Commission on 30 April 2008 following its ‘European Transparency Initiative’. This initiative, which was launched on 9 November 2005, included indeed a review of Regulation (EC) No 1049/2001 as part of the Commission’s drive to create more openness.

The aim of the Recast Proposal is to:

- achieve more transparency in the legislative area;
- align the Regulation with the provisions on access to environmental information laid down in Regulation (EC) No 1367/2006;
- reflect the views of the European Parliament as set in its Resolution of 4 April 2006 (whereby the European Parliament had called on the Commission to come forward with some proposals for amending the Regulation on some specific points) and the

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[https://ec.europa.eu/info/sites/default/files/sec2020344\\_en.pdf](https://ec.europa.eu/info/sites/default/files/sec2020344_en.pdf)); and fosters a ‘better regulation’ system which is acknowledged as one of the most advanced regulatory approaches in the world (See [OECD Regulatory Policy Outlook 2018](#) (OECD Publishing, Paris). In early 2020, the institution pursued its exercise of taking stock of the ‘Better Regulation’ Agenda of 2015, so as to assess both its positive aspects and areas for improvement. The work was concluded by the adoption of the Better Regulation Communication on 28 April 2021 (see [better regulation joining forces to make better laws en 0.pdf \(europa.eu\)](#)). Furthermore, the European Commission continued, notwithstanding the COVID-19 pandemic, to implement via various initiatives and actions, its ‘Europe for citizens’ programme’ which was set for the period 2014-2020 and was designed to encourage EU citizens to be better informed, take part in the debate and play a stronger role in the development of the EU. (See [https://ec.europa.eu/info/departments/justice-and-consumers/justice-and-consumers-funding-tenders/funding-programmes/europe-citizens-efc-0\\_en#documents](https://ec.europa.eu/info/departments/justice-and-consumers/justice-and-consumers-funding-tenders/funding-programmes/europe-citizens-efc-0_en#documents)). Finally, in this unprecedented context of COVID-19 pandemic, the European Commission adopted on 19 May 2020 a proposal for a regulation extending the time limits for the collection, verification and examination phases applicable to European Citizens’ initiatives. The final text of this Regulation was adopted by the European Parliament and the Council on 15 July 2020 (See [Regulation \(EU\) 2020/1042 of the European Parliament and of the Council of 15 July 2020 laying down temporary measures concerning the time limits for the collection, the verification and the examination stages provided for in Regulation \(EU\) 2019/788 on the European citizens’ initiative in view of the COVID-19 outbreak](#), OJ L 231, 17.7.2020, p. 7–11).

<sup>14</sup> See <https://ec.europa.eu/transparency/regdoc/rep/1/2008/EN/1-2008-229-EN-F1-1.Pdf>.

<sup>15</sup> See [https://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/com/com\\_com\(2011\)0137\\_/com\\_com\(2011\)0137\\_en.pdf](https://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2011)0137_/com_com(2011)0137_en.pdf).

results of the public consultation exercise launched by the Commission's Green Paper; as well as,

- incorporate the clarifications provided by the case-law of the Court of Justice and the European Ombudsman's practice.

The second proposal submitted on 21 March 2011, aimed at 'Lisbonising' Regulation (EC) No 1049/2001, namely by extending the right of public access to documents of all institutions, bodies, offices and agencies in order to align the Regulation with the new Article 15(3) of the Treaty on the Functioning of the European Union. This proposal was not intended to prejudice the ongoing procedure for a recast of Regulation (EC) No 1049/2001 on the basis of the 2008 Commission's proposal, which it left intact.

On 29 January 2020, following the European Parliament's request in the framework of the decision of the Conference of Presidents on 16 October 2019, the Commission proposed the withdrawal of both proposals in its 'Work Programme 2020'<sup>16</sup>.

The latter was transmitted to the Council and the European Parliament for consultation in accordance with point 9 of the Interinstitutional Agreement on Better Law-making. As the European Parliament opposed the withdrawal of the proposals, the Commission agreed, by letter of 14 September 2020, not to withdraw them and to support further political discussion.

As such, the withdrawal act corresponding to annex IV of the 2020 Commission Work Programme, which contains the final list of withdrawn proposals, was published on 29 September 2020 without including the two proposals related to Regulation (EC) No 1049/2001<sup>17</sup>.

Consequently, both proposals are still pending and remain the basis for any further legislative and political discussions. Nevertheless, the Commission considers that Regulation (EC) No 1049/2001 as construed per the case-law of the European Court of Justice continues to provide a an appropriate and efficient legal framework for ensuring public access to documents.

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

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

- *Initial applications*

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<sup>16</sup> See No.31 of Annex IV of the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Commission Work Programme 2020, A Union that strives for more, COM(2020) 37 final, 29 January 2020, available at: [https://eur-lex.europa.eu/resource.html?uri=cellar%3A7ae642ea-4340-11ea-b81b-01aa75ed71a1.0002.02/DOC\\_2&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar%3A7ae642ea-4340-11ea-b81b-01aa75ed71a1.0002.02/DOC_2&format=PDF)

<sup>17</sup> [https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=uriserv:OJ.C\\_.2020.321.01.0037.01.FRA&toc=OJ:C:2020:321:TOC](https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=uriserv:OJ.C_.2020.321.01.0037.01.FRA&toc=OJ:C:2020:321:TOC)

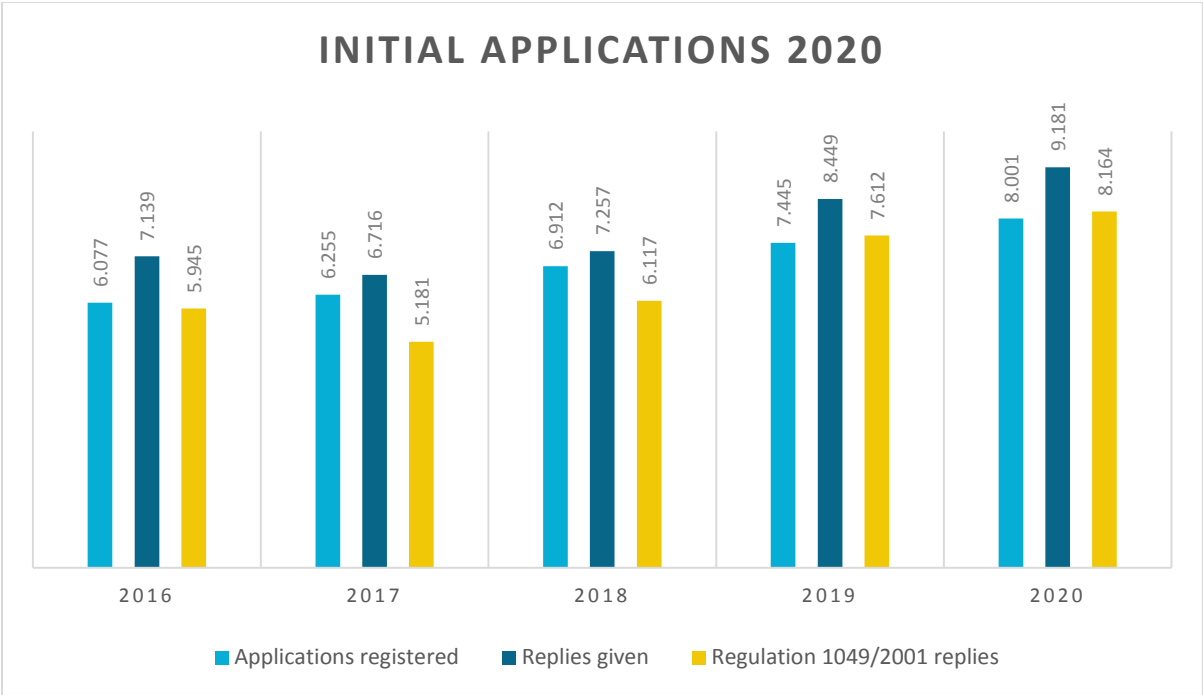
As illustrated by the graph below, in 2020, the number of initial applications reached 8,001<sup>18</sup>. This figure reflects a striking increase of almost 7.5% in comparison with 2019<sup>19</sup>.

The European Commission issued 9,181 initial replies in comparison with 8,449 in 2019, showing a rise of almost 8.7%.

Amongst those initial replies, 8,164 were issued on the basis of Regulation (EC) No 1049/2001 (compared to 7,612 in 2019)<sup>20</sup>. This number illustrates an increase of around 7.25% in one year.

The number of ‘replies given’, 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<sup>21</sup>, etc.); or even
- closures following the applicants’ failure to provide requested clarifications or to fulfil procedural requirements.



<sup>18</sup> It is noteworthy that a single request can concern several documents 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 to one single reply.

<sup>19</sup> In 2019, the number of initial applications amounted to 7,445.

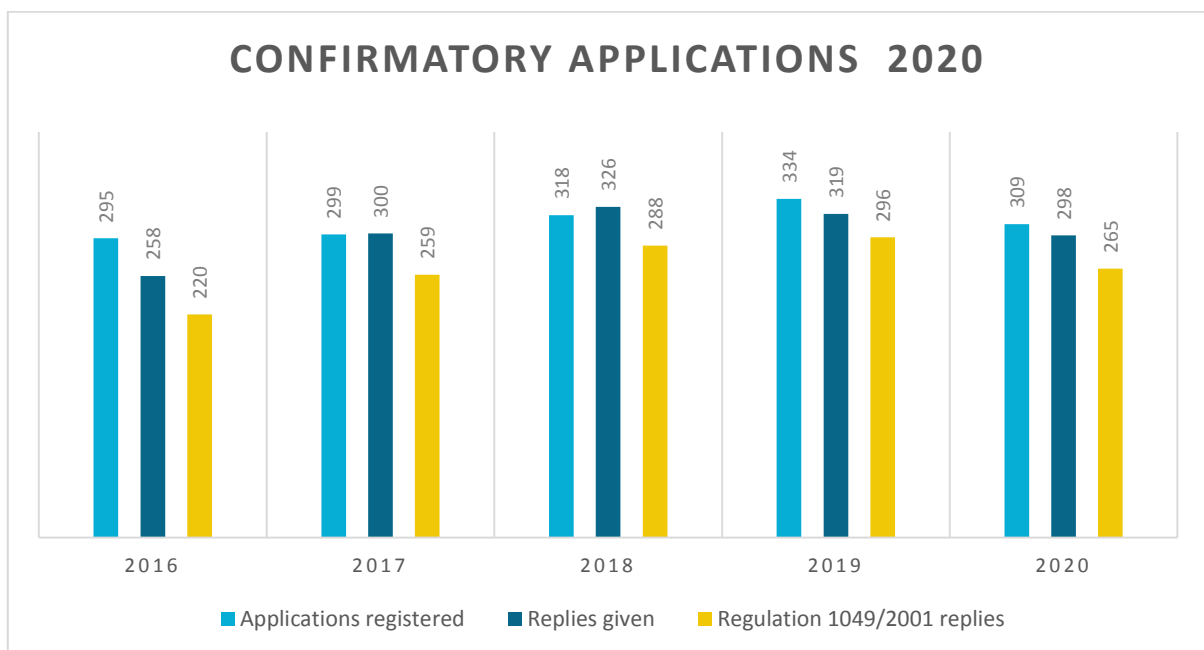
<sup>20</sup> Depending on the contents of the requests or the status of the applicants, the remaining replies resulted in responses handled in accordance with other legal frameworks (such as the Code of Good Administrative Behaviour or the principle of sincere cooperation, etc.).

<sup>21</sup> For instance, replies provided under the principle of sincere cooperation with Member States or other institutions; or replies on the basis of the Code of Good Administrative Behaviour, etc.

- *Confirmatory applications*

As regards confirmatory applications requesting a review by the European Commission of initial replies fully or partially refusing access, their number amounted to 309 in 2020, reflecting a decrease of almost 7.5% in comparison with 2019. This is the first time that a decrease in the number of confirmatory applications can be observed since 2015.

The European Commission issued 298 replies, amongst which 265 were based on Regulation (EC) No 1049/2001. This last number reflects a decrease of almost 10.5% compared to 2019 as illustrated by the graph below.



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

- *Access to documents of the European Anti-Fraud Office and European External Action Service*

It is noteworthy that 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 the European Anti-Fraud Office’ 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 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents*<sup>22</sup>.

<sup>22</sup> Commission Decision of 5 December 2001 amending its rules of procedure, OJ L 345, 29.12.2001, p.94.

In 2020, the European Anti-Fraud Office received 16 initial and three confirmatory applications in relation to its investigative activities, which are therefore not covered by this report.

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*

In 2020, the *Secretariat-General*<sup>23</sup> received the highest proportion of initial applications (10.2%).

It was closely followed by the *Directorate-General for Health and Food Safety*<sup>24</sup>, which accounted for almost 7.7% of the initial applications. This figure illustrates the steady great interest of the applicants in health-related matters, which prevailed even before the Covid-19 pandemic<sup>25</sup>.

It was followed by the *Directorate-General for International Cooperation and Development*<sup>26</sup> (7.3%), the *Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs*<sup>27</sup> (7.1%), the *Directorate-General for Competition*<sup>28</sup> (6.2%), the *Directorate-General for Migration and Home Affairs*<sup>29</sup> (4.8%), the *Directorate-General for Taxation and Customs Union*<sup>30</sup> (4.7%) the *Directorate-General for Mobility and Transport*<sup>31</sup> (4.5%), and the *Directorate-General for Financial Stability, Financial Services and Capital Markets Union*<sup>32</sup> (4%).

The remaining European Commission departments and services each accounted for less than 4% of all initial applications.

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<sup>23</sup> Referred to as 'SG' in the graphs below.

<sup>24</sup> Referred to as 'SANTE' in the graphs below.

<sup>25</sup> See the previous Annual Reports, available at: [https://ec.europa.eu/info/publications/reports-public-access-european-parliament-council-and-commission-documents\\_en](https://ec.europa.eu/info/publications/reports-public-access-european-parliament-council-and-commission-documents_en).

<sup>26</sup> Referred to as 'DEVCO' in the graphs below.

<sup>27</sup> Referred to as 'GROW' in the graphs below.

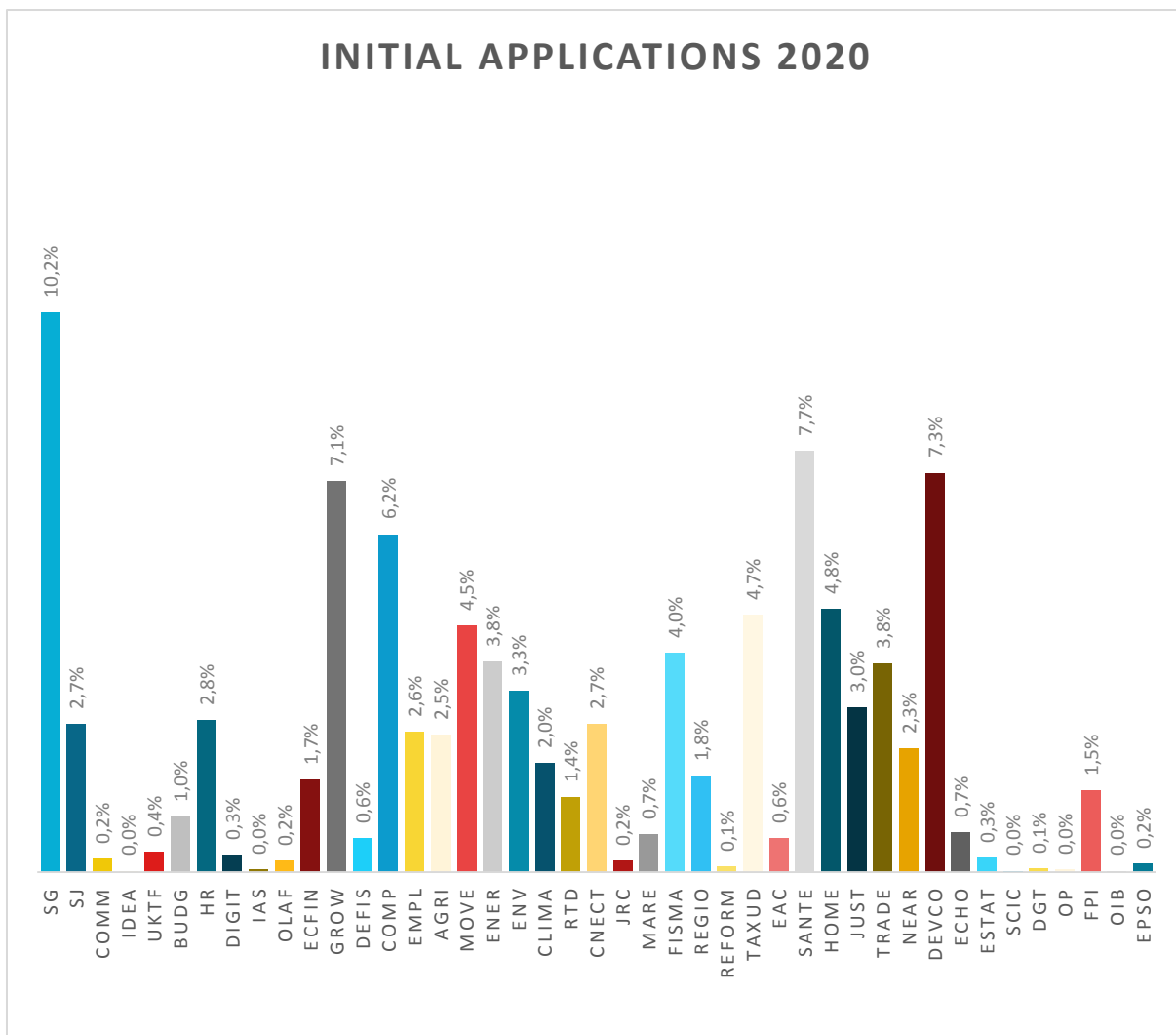
<sup>28</sup> Referred to as 'COMP' in the graphs below.

<sup>29</sup> Referred to as 'HOME' in the graphs below.

<sup>30</sup> Referred to as 'TAXUD' in the graphs below.

<sup>31</sup> Referred to as 'MOVE' in the graphs below.

<sup>32</sup> Referred to as 'FISMA' in the graphs below.



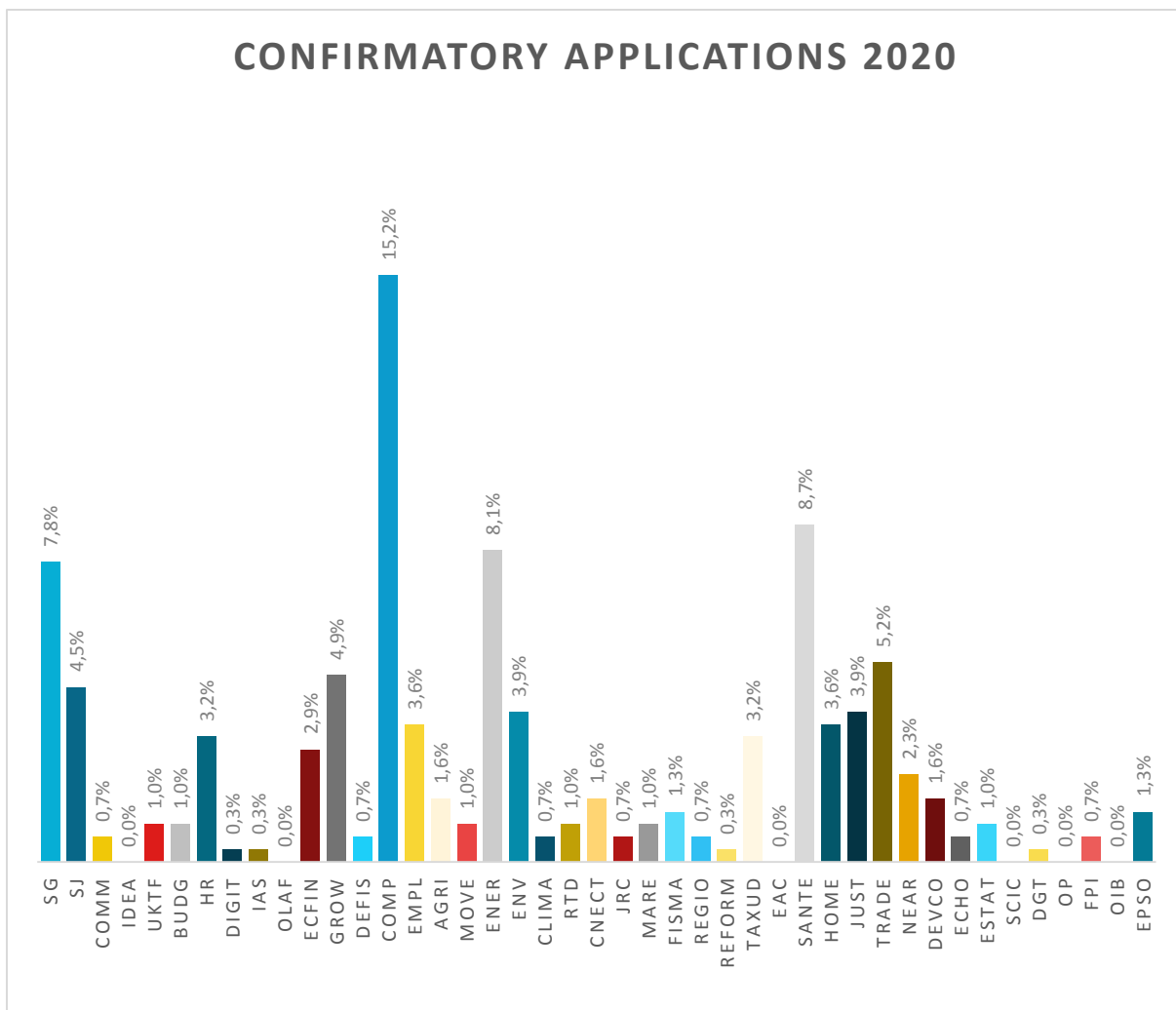
- *Confirmatory applications*

The highest proportion of confirmatory applications received in 2020 by the Secretariat-General originated from initial replies provided by the *Directorate-General for Competition* (15.2%).

The latter was followed by the *Directorate-General for Health and Food Safety* (8.7%), the *Directorate-General for Energy*<sup>33</sup> (8.1%), the *Secretariat-General* (7.8%), the *Directorate-General for Trade* (5.2%), the *Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs* (4.9%) and the *Legal Service*<sup>34</sup> (4.5%). The initial replies provided by the remaining European Commission departments and services accounted each for less than 4% of requests for a confirmatory review.

<sup>33</sup> Referred to as ‘ENER’ in the graphs above and below.

<sup>34</sup> Referred to as ‘SJ’ in the graphs above and below.



### 3.3. Social and occupational profile of applicants (Annex – Table 6)

Applicants may indicate on the application form of the Europa Website, their social/occupational profile by selecting one of the nine following categories: citizen, academic, lawyer, journalist, non-governmental organisation, company, Member of the European Parliament, subnational or Member State authorities<sup>35</sup>.

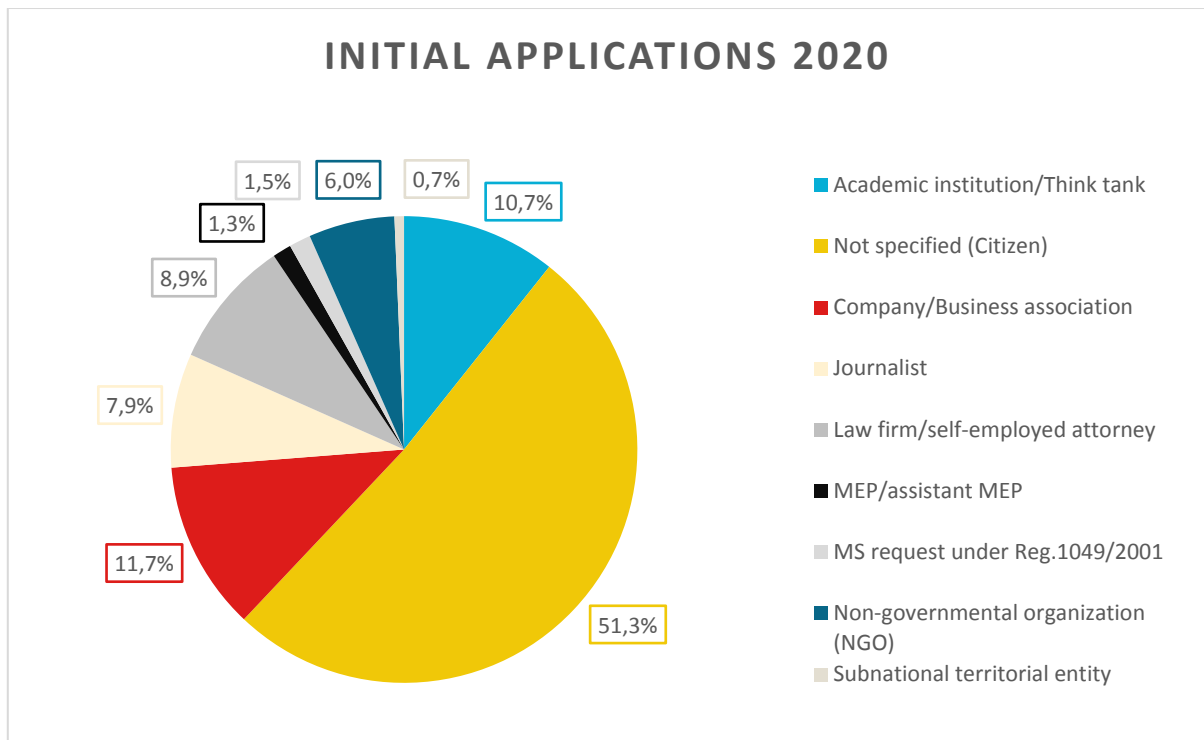
For statistical purposes, the profile of ‘citizens’ covers the applicants who indicated their profile as such, and constitutes the default option covering those who did not select any social/occupational category.

- *Initial applications*

In 2020, most initial applications originated, as in the previous years from *citizens*. This category of applicant submitted indeed approximately 51.3% of the requests.

<sup>35</sup> The latter 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.

The second place amongst the most prolific applicants, which was occupied by *academic institutions and think tanks* in 2019, was in 2020 regained by *companies* (as in 2018) who accounted for 11.7% of the initial applications. Nevertheless, *academic institutions and think tanks* closely followed with approximately 10.7% of the initial applications. *Legal professionals* and *journalists* (with respectively 8.9% and 7.9%) continue to remain major applicants, as in the previous years. *Non-governmental organisations* (with almost 6%) represent the only remaining category of applicants accounting for more than 5% of the initial applications. They were followed by some distance by the remaining categories, accounting each for less than 2% of the initial applications.



- *Confirmatory applications*

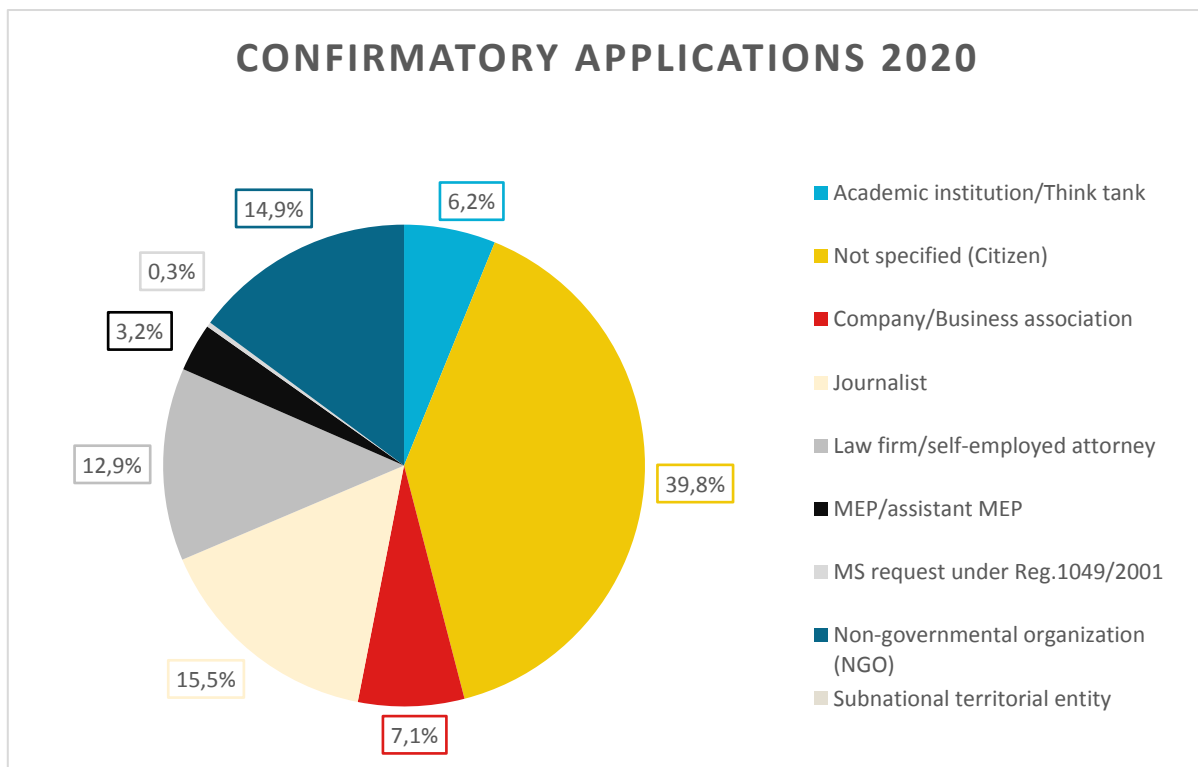
Most confirmatory applications in 2020 originated from citizens, who accounted for 39.8% of such applications (compared to 51.5% in 2019 and 36.2% in 2018).

Journalists were in second position, submitting a large number of confirmatory applications, accounting for no less than 15.5%.

The third position is occupied by non-governmental organisations who submitted 14.9% of the confirmatory applications, followed by Legal professionals, accounting for approximately 12.9% of the confirmatory applications.

They were followed by some distance by companies (7.1%), Academic institutions and think tanks (6.2%) and the remaining categories accounted each for less than 4% of the confirmatory applications.





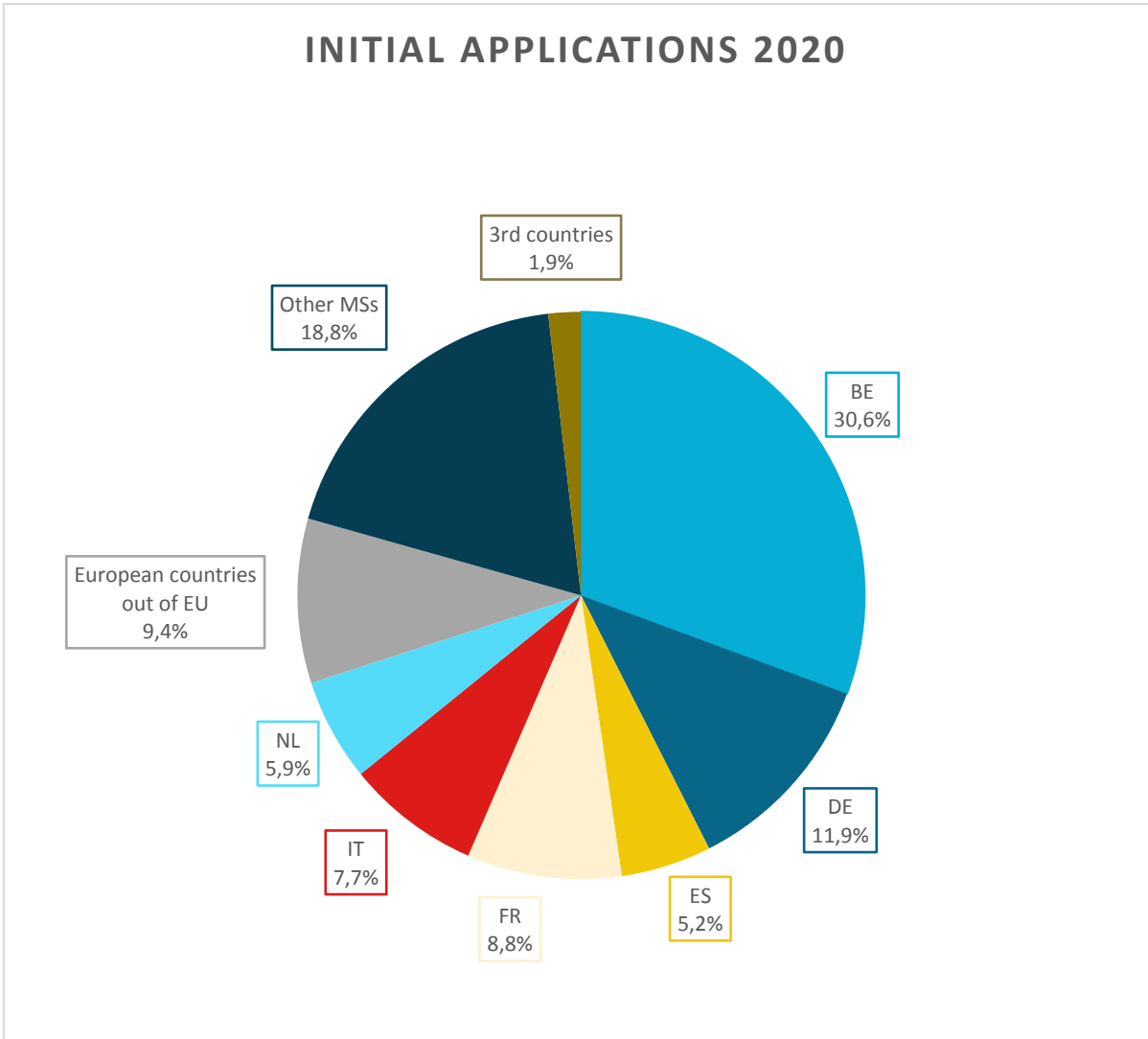
#### 3.4. The geographical origin of applicants (Annex – Table 7)

- *Initial applications*

Regarding the geographical breakdown of initial applications in 2020, it appears that those submitted by applicants from Belgium (30.6%), Germany (11.9%) and France (8.8%) account together for over half of the total number of applications received by the Commission. Fourth came Italy with almost 7.7% of the initial applications, followed by the Netherlands (5.9%) and Spain (5.2%). The applications originating from the remaining Member States accounted for less than 2% per Member State.

A sharp decrease of the number of applications from the United Kingdom is noted and striking. Indeed, in 2020, less than 0.5% of the initial applications originated from the United Kingdom, compared to 7.8% in 2019, 9.2% in 2018 and 15.2% in 2017. The fact that the United Kingdom left the European Union on 31 January 2020, following the ratification of the Withdrawal Agreement by the EU and the United Kingdom had a clear impact on these data.

In 2020, the right of access to documents also continued to be exercised by applicants residing or having their registered offices in third countries. Their initial applications confirmed the slight but steady increase observed in the previous years, accounting for approximately 11.2% compared to 6.6% in 2019, 5.3% in 2018 and almost 5% in 2017.

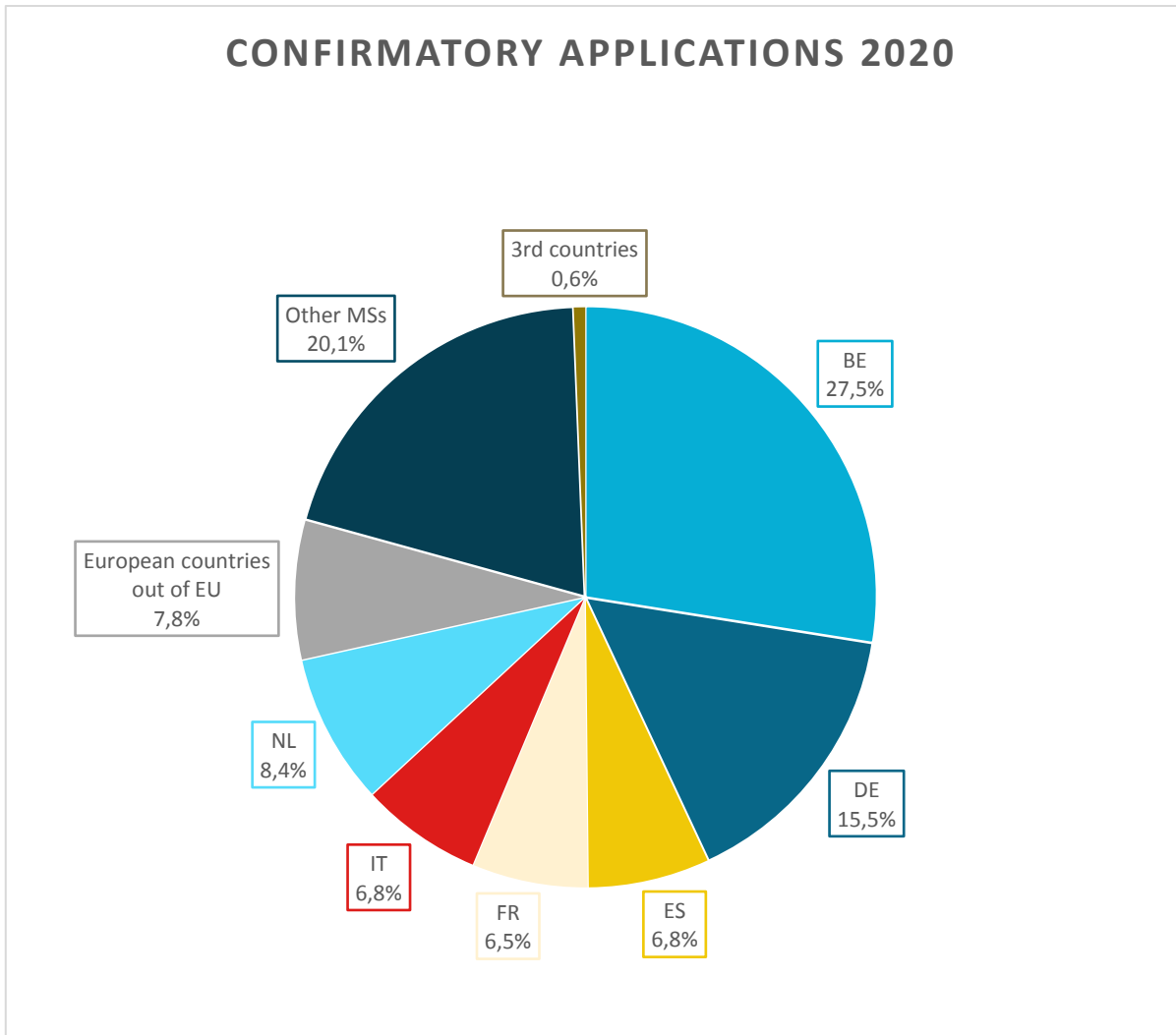


- *Confirmatory applications*

Regarding the geographical breakdown of confirmatory applications, the largest proportion by far originated, as in the previous years, from applicants residing/established within Belgium who represented 27.5% of all applicants, albeit confirming the net decrease already observed since 2019.

The second largest category of applicants originated, as in 2019, from Germany (15.5%), followed by the Netherlands (8.4%), Spain and Italy (each 6.8%), and France (6.5%). For the remaining Member States, this figure did not exceed 4%.

Finally, the number of confirmatory applications from applicants residing or having their registered office in third countries, who accounted for no less than 8.3%, observed a net increase (compared to almost 1.5% in 2019, 2.2% in 2018 and 3.6% in 2017).



#### 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*

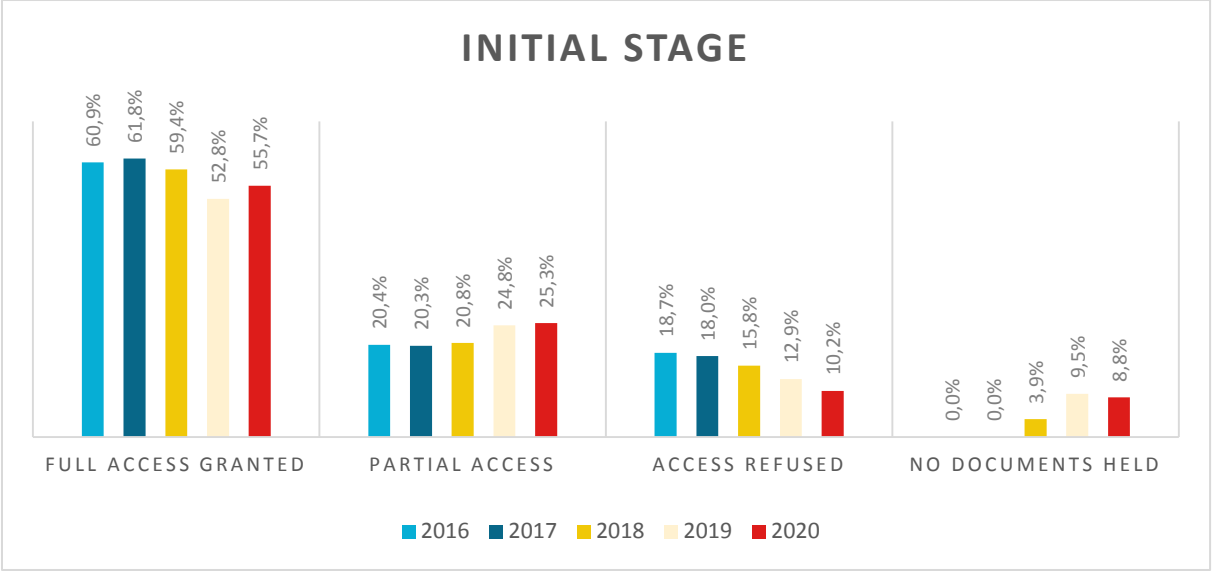
In 2020, full or partial access to documents was granted in 81% of cases at the initial stage (showing thereby an increase since 2019, where it reached 77.6%).

The percentage of fully positive replies noticeably increased from 52.8% in 2019 to 55.7% in 2020.

Moreover, the percentage of partially positive replies continued to confirm the steady upward trend observed since 2017 (from 20.3% in 2017, to 20.8% in 2018, 24.8% in 2019 and 25.3% in 2020).

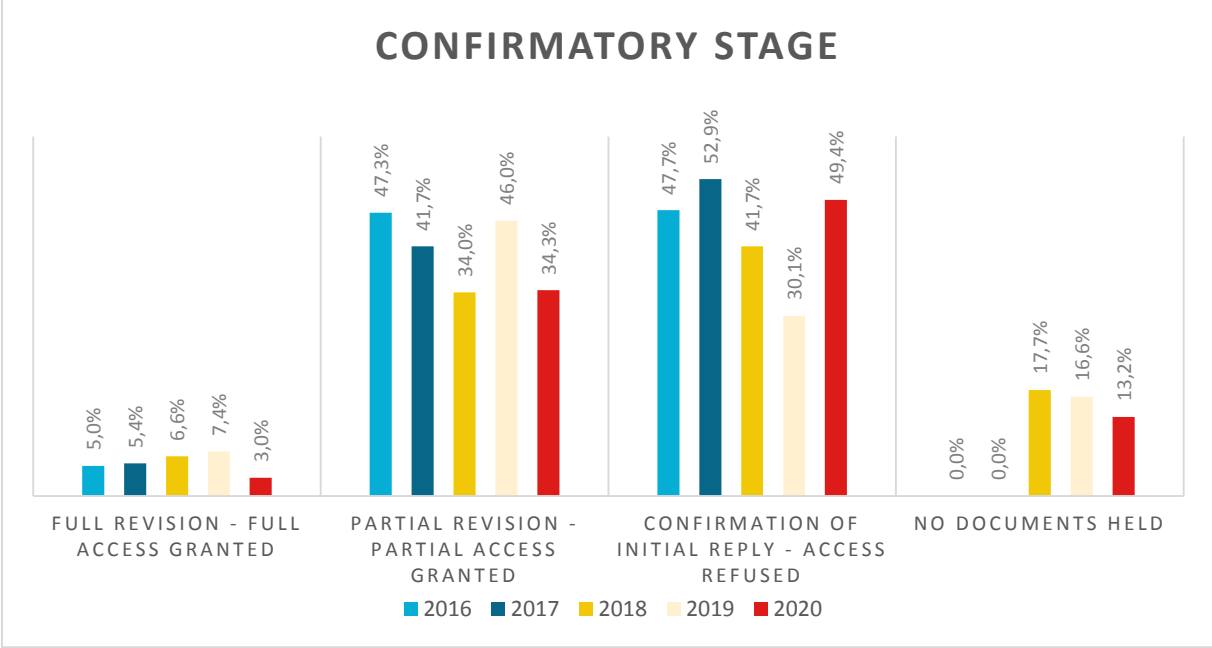
In parallel, the steady decrease in the percentage of fully rejected access, observed since 2016, continued, accounting for only 10.2% of the total initial applications (against 12.9% in 2019, 15.8% in 2018; and 18% and 18.7%, in 2017 and 2016 respectively).

Moreover, 2020 reflected a slight decrease in the number of cases in which the documents requested either did not exist or were not held by the institution (8.8% of the initial applications, compared to 9.5% of the initial applications in 2019).



- *Confirmatory stage*

In 2020, 49.4% of the initial replies challenged by confirmatory applications were fully confirmed at the confirmatory stage (compared to 30.1% in 2019, 41.7% in 2018 and 52.9% in 2017). 37.4% of confirmatory applications were fully or partially reversed (against 53.4% in 2019).



## 4.2. Invoked exceptions to the right of access<sup>36</sup> (Annex – Table 10)

### 4.2.1. Initial stage

In 2020, the protection of *privacy and the integrity of the individual*<sup>37</sup> continued to be, as in previous years, the most frequent exception relied upon by the European Commission for (fully or partially) refusing access at the initial stage. It was invoked in no less than 44.1% of the refusals, compared to 41.1% in 2019 and 34.5% in 2018.

As in previous years, a large number of those refusals resulted from the need to redact the names of non-senior staff members or third-party representatives appearing in the documents, in accordance with the applicable data protection legislation.

The second most invoked exception concerns the protection of *commercial interests*<sup>38</sup>. This exception was relied upon in 14.2 % of the (partial or full) refusals<sup>39</sup>.

The exception related to the protection of the *purpose of inspections, investigations and audits*<sup>40</sup> confirmed its place as the third most relied upon exception, accounting for 11.6% of the refusals<sup>41</sup>.

The exception aimed at protecting the *ongoing decision-making process*<sup>42</sup> followed, with a percentage of use of 9.7%<sup>43</sup>.

The relative use of the exception protecting *public security*<sup>44</sup> marked a slight decrease (from 9.2% in 2019 to 6.4% in 2020).

Apart from the exception providing for the protection of *international relations*<sup>45</sup> which accounted for 5.4% of the cases<sup>46</sup>, the remaining exceptions provided by Regulation (EC) No 1049/2001, were invoked by the institution in less than 4% each, in refusing partial or full access to the requested documents at the initial stage.

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<sup>36</sup> On the basis of Article 4 of Regulation (EC) No 1049/2001.

<sup>37</sup> This exception is provided under Article 4(1)(b) of Regulation (EC) No 1049/2001.

<sup>38</sup> This exception is provided under the first indent of Article 4(2) of Regulation (EC) No 1049/2001.

<sup>39</sup> Compared to 15% in 2019 and 15.4% in 2018.

<sup>40</sup> This exception is provided under the third indent of Article 4(2) of Regulation (EC) No 1049/2001.

<sup>41</sup> Compared to 13.4 in 2019 and 12.7% in 2018.

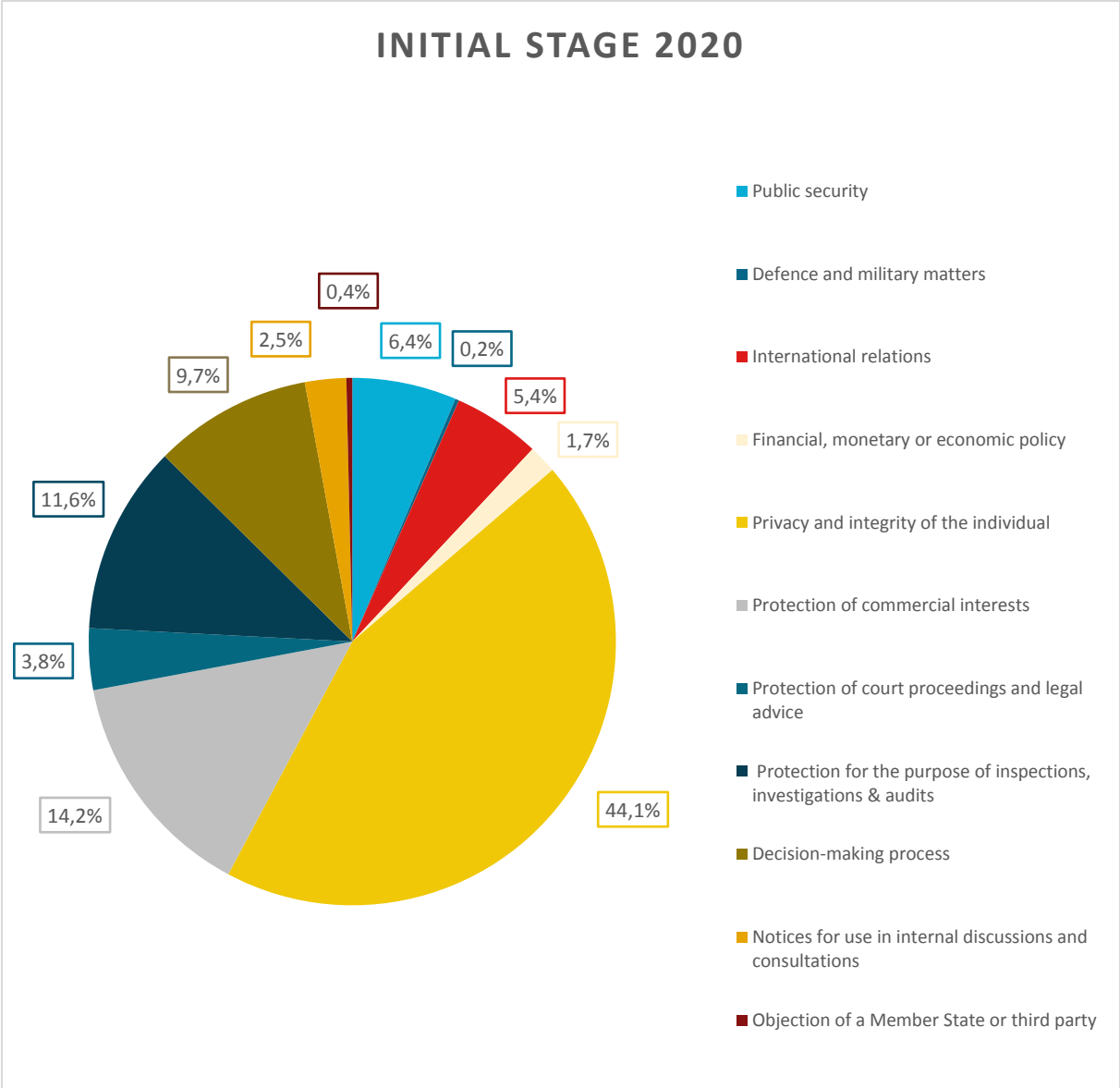
<sup>42</sup> This exception is provided under the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001.

<sup>43</sup> Compared to 10.2% in 2019 and 15.1% in 2018.

<sup>44</sup> This exception is provided under the first indent of Article 4(1) of Regulation (EC) No 1049/2001.

<sup>45</sup> This exception is provided under the third indent of Article 4(1) of Regulation (EC) No 1049/2001.

<sup>46</sup> Compared to 5.3% in 2019.



4.2.2. *Confirmatory stage*

Notwithstanding a certain decrease in its use, the protection of the *purpose of inspections, investigations and audits* continued to be in 2020, like in the previous years, the most frequently invoked, main ground for confirming a (full or partial) refusal of access, accounting for 33% of the cases (compared to 24.3% in 2019 and 30.6% in 2018).

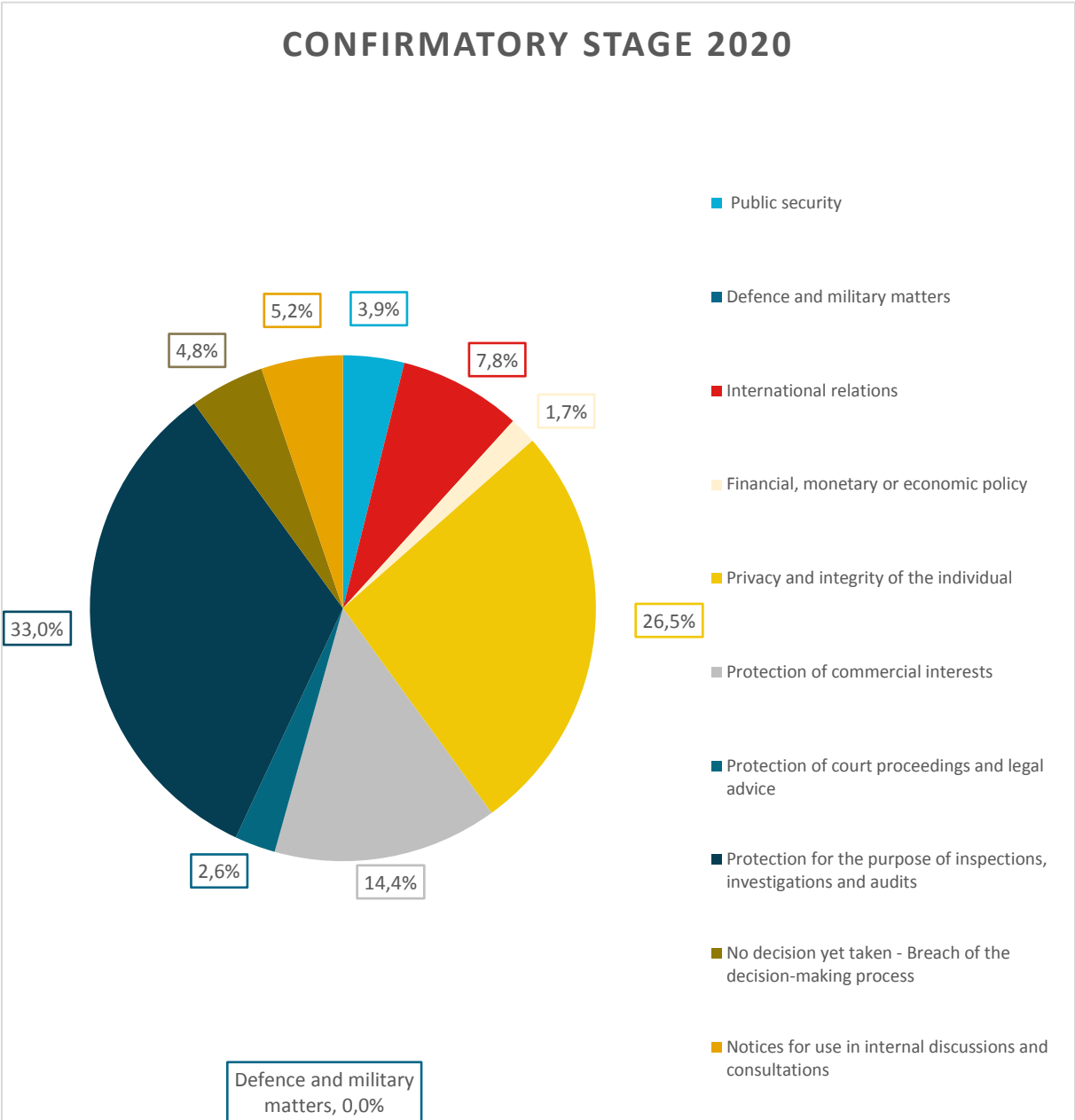
The exception protecting *privacy and the integrity of the individual* came second (26.5% compared to 22.2% in 2019 and 25% in 2018).

The exception protecting the public interest as regards *commercial interests* took the third place in 2020 with 14.4%, breaking thereby the previously steady decrease in its use observed from 2016 to 2019 included.

It was followed by the exception protecting *international relations*, which was invoked in 7.8% of the refusals, compared to 18.4% in 2019.

The exception protecting the *closed decision-making process* of the institution came in fifth position with a percentage of reliance of 5.2%, showing thereby a slight increase compared to 2019 where it represented only 4.2% of the refusals.

The remaining exceptions represented each less than 5% of the grounds for refusal at confirmatory stage.



## 5. COMPLAINTS TO THE EUROPEAN OMBUDSMAN

In 2020, the European Ombudsman opened 28 new enquiries where access to documents was either the main or a subsidiary part of the complaint, compared to 32 in 2019 and 29 in 2018, and closed 23 complaints, compared to 42 in 2019<sup>47</sup>.

Despite the fact that the European Ombudsman's recommendations are not legally binding, the Commission attaches great authoritative weight to them, in particular with regard to the application of the provisions concerning access to documents. In line with the rules laid down in Regulation (EC) No 1049/2001 and the case law of the Court of Justice, the Commission takes steps to align its practice with the recommendations of the European Ombudsman and welcomes the positive cooperation with the latter.

Against this background, in 2020, in only two of the 23 closed cases, the European Ombudsman found instances of maladministration<sup>48</sup>. The remaining 21 cases were all closed without any remarks or suggestions for improvement from the European Ombudsman<sup>49</sup>.

## 6. NEW CASE LAW ON ACCESS TO DOCUMENTS

In 2020, the EU Courts further developed, in the framework of various judicial proceedings, the already considerable body of case law concerning access to documents of the EU institutions. This newly generated case law confirmed to a large extent the European Commission's practice under Regulation (EC) No 1049/2001 and will continue to guide it further.

### 6.1. The Court of Justice

The Court of Justice handed down in 2020 only two judgments 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 five in 2019<sup>50</sup>.

In both judgments, the Court of Justice dismissed the appeals. In one of these cases (namely case C-612/18 P), the judgment of the General Court dismissing the action for annulment introduced against the decision of the Commission was upheld.

Moreover, in both cases, the Court of Justice clarified issues extending from procedural aspects to more substantive points arising from the implementation of Regulation (EC) No 1049/2001.

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<sup>47</sup> The statistics concern the European Ombudsman cases for all European Commission departments except the European Anti-Fraud Office.

<sup>48</sup> In case 1050/2018, the European Ombudsman concluded that the Commission's failure to ask an official to identify and retrieve e-mails in the official's work email in-box, for the purpose of assessment if they can be disclosed is maladministration. Another instance of maladministration was identified in case 1794/2019 where the Commission refused to provide the complainant with a copy of the requested documents without redacting the name of the former head of unit.

<sup>49</sup> The matter was settled in seven of those cases.

<sup>50</sup> Namely: Judgments of 19 March 2020, [ClientEarth v European Commission, C-612/18P, EU:C:2020:223](#); and of 30 April 2020, [Izba Gospodarcza Producentów i Operatorów Urządzeń Rozrywkowych v European Commission, C-560/18P, EU:C:2020:330](#).



### 6.1.1. Clarifications of some substantive rules

Of the two judgments handed down by the Court of Justice in 2020 in relation to the implementation of Regulation (EC) No 1049/2001, one of them, namely the *ClientEarth v European Commission* case<sup>51</sup>, provided the Court with the opportunity to clarify the scope of the exception for *the protection of international relations* provided under the third indent of Article 4(1)(a) of the Regulation.

The Court of Justice held that certain parts of documents related to the compatibility with EU law of the Investor-State Dispute Settlement and the Investment Court System in EU trade agreements, could be withheld by the Commission on the basis of the third indent of Article 4(1)(a) of Regulation (EC) No 1049/2001, as they were still under negotiation in the framework of the agreement concerned (the Transatlantic Trade Investment Partnership).

In the second judgment, namely in case *Izba v European Commission*, the Court of Justice clarified that in assessing the legal interest of applicants in the continuation of the proceedings, account had to be taken of the fact that the contested decision had been adopted on the basis of the implementation of a general presumption of confidentiality, covering documents related to an infringement procedure, already accepted by the Court of Justice<sup>52</sup>.

### 6.1.2. Clarifications of some procedural rules

The Court of Justice confirmed that an applicant, whose request for access to documents was initially refused, could seek a ruling against the institution concerned by the request in question, even though its request had been granted after it brought an action before the EU Courts, only when the applicant can demonstrate that the alleged unlawfulness is likely to recur in the future, irrespective of the particular circumstances of the case<sup>53</sup>.

## 6.2. The General Court

In 2020, the General Court handed down ten judgments<sup>54</sup> involving the European Commission in relation to the right of access to documents under Regulation (EC) No 1049/2001<sup>55</sup>.

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<sup>51</sup> Judgment of 19 March 2020, *ClientEarth v European Commission*, C-612/18P, *op.cit.*

<sup>52</sup> Judgment in *Izba v European Commission*, C-560/18P, *op.cit.* 49.

<sup>53</sup> *Ibid.* paragraph 50.

<sup>54</sup> Compared to nine in 2019.

<sup>55</sup> Orders of 14 December 2020, [ClientEarth AISBL v European Commission, T-255/20, EU:T:2020:642](#), of 27 November 2020, [PL v European Commission, T-728/19, EU:T:2020:575](#); and judgments of 23 September 2020, [Giorgio Basaglia v European Commission, T-727/19, EU:T:2020:446](#); of 25 November 2020, [Marco Bronckers v European Commission, T-166/19, EU:T:2020:557](#); of 28 May 2020, [Liam Campbell v European Commission, T-701/18, EU:T:2020:224](#); of 26 March 2020, [Laurence Bonnafous v European Commission, T-646/18, EU:T:2020:120](#); of 6 February 2020, [Compañía de Tranvías de La Coruña, SA v European Commission, T-485/18, EU:T:2020:35](#); of 26 March 2020, [ViaSat, Inc. v European Commission, T-734/17, EU:T:2020:123](#); 28 May 2020, [ViaSat, Inc. v European Commission, T-649/17, EU:T:2020:235](#), and of 30 January 2020, [CBA Spielapparate- und Restaurantbetriebs GmbH v European Commission, T-168/17, EU:T:2020:20](#).

Amongst these ten judgments, six of them rejected the actions of annulment against the Commission's decisions<sup>56</sup>.

In another case, it held that there was no need to adjudicate on the action against a negative implied decision that had become devoid of purpose by reason of the adoption of an express positive confirmatory decision<sup>57</sup>.

In three of those judgments, the General Court ordered the annulment of the Commission's decision<sup>58</sup>.

In the framework of this body of case law developed in 2020, 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 2020, the substantive clarifications issued by the General Court essentially revolved around the application of the exceptions below.

- *Exception relating to the protection of international relations*

As regards the concept of international relations underlying the exception provided under the third indent of Article 4(1)(a) of Regulation (EC) No 1049/2001, the General Court held that it encompasses not only the negotiation but also the implementation phases of international agreements<sup>59</sup> and that for documents originating from a third country whose disclosure is liable to undermine the interest protecting international relations, the third country's opposition to the disclosure is one of the circumstances which must be taken into account in the assessment of the risk to the interest protected<sup>60</sup>.

- *Exception relating to the protection of commercial interests*

The General Court noted that for the purpose of applying the exception for the protection of commercial interests provided under the first indent of Article 4(2) of Regulation (EC) No 1049/2001, the rule pursuant to which commercially sensitive information of five years old or older must be regarded as historical, constitutes a useful indication<sup>61</sup>.

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<sup>56</sup> Namely, Order *PL v European Commission*, T-728/19, *op.cit.*; and judgments *Marco Bronckers v European Commission*, T-166/19, *op.cit.*; *Laurence Bonnafous v European Commission*, T-646/18, *op.cit.*; *ViaSat, Inc. v European Commission*, T-734/17, *op.cit.*; *ViaSat, Inc. v European Commission*, T-649/17, *op.cit.*; and *CBA Spielapparate- und Restaurantbetriebs GmbH v European Commission*, T-168/17, *op.cit.*

<sup>57</sup> Namely, order in *ClientEarth AISBL v European Commission*, T-255/20, *op.cit.*

<sup>58</sup> Namely, judgments in *Giorgio Basaglia v European Commission*, T-727/19 *op.cit.*; *Liam Campbell v European Commission*, T-701/18, *op.cit.*; and *Compañía de Tranvías de La Coruña, SA v European Commission*, T-485/18, *op.cit.*

<sup>59</sup> Judgment in *Marco Bronckers v European Commission*, T-166/19, *op.cit.* Paragraph 70.

<sup>60</sup> *Ibid.* Paragraph 59.

<sup>61</sup> Judgment in *Giorgio Basaglia v European Commission*, T-727/19, *op.cit.* Paragraph 82.

Nevertheless, it remains open to the institution concerned to demonstrate that that information always contains one of the essential elements of the commercial position of the undertaking concerned, where appropriate after consultation with the latter in accordance with Article 4(4) of that regulation<sup>62</sup>. The burden of proof in this respect lies with the institution<sup>63</sup>.

- *Exception relating to the protection of court proceedings*

The General Court stressed that the exception laid down in the second indent of Article 4(2) of Regulation (EC) No 1049/2001, precludes the disclosure of: the content of documents drawn up solely for the purposes of specific court proceedings, including pleadings or other documents lodged during court proceedings, internal documents concerning the investigation of the case before the court and correspondence concerning the case between the Directorate-General concerned and the legal service or a lawyers' office<sup>64</sup>. It also concerns documents whose disclosure is liable, in the context of specific proceedings, to compromise the principle of equality of arms, due to their relevant link at the time of adoption of the decision refusing access, either with a dispute pending before the Courts of the European Union, or with proceedings pending before a national court, which are particularly likely to require a reference for a preliminary ruling<sup>65</sup>.

- *Exception relating to the protection of the purpose of inspections, investigations and audits*

The General Court held that a structured and formalised Commission procedure that has the purpose of collecting and analysing information in order to enable the institution to take a position in the context of its functions provided for by the Treaties has to be considered as an investigation. This concept may cover Commission activity intended to establish facts in order to assess a given situation<sup>66</sup>.

Moreover, in order for a procedure to be classified as an 'investigation', the Commission's position in performing its functions is not required to take the form of a decision within the meaning of the fourth paragraph of Article 288 TFEU, and, may consist of, *inter alia*, a report or a recommendation<sup>67</sup>.

Further, the concept of investigations within the meaning of Article 4(2) of Regulation (EC) No 1049/2001 is not restricted to investigative activities conducted by an EU institution and encompasses those conducted by public authorities of Member States for the protection of its specific interests<sup>68</sup>.

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<sup>62</sup> Judgment in *Giorgio Basaglia v European Commission*, T-727/19, *op.cit. ibid.*

<sup>63</sup> Judgment in *Giorgio Basaglia v European Commission*, T-727/19, *op.cit. ibid.*

<sup>64</sup> Judgment in *Compañía de Tranvías de La Coruña, SA v European Commission*, T-485/18, *op.cit.* Paragraph 41.

<sup>65</sup> Judgment in *Compañía de Tranvías de La Coruña, SA v European Commission*, T-485/18, *op.cit.* Paragraph 66

<sup>66</sup> Judgment in *ViaSat, Inc. v European Commission*, T-649/17, EU:T:2020:235, *op.cit.* Paragraph 66

<sup>67</sup> Judgment in *ViaSat, Inc. v European Commission*, T-649/17, EU:T:2020:235, *op.cit.* Paragraph 67.

<sup>68</sup> Judgment in *ViaSat, Inc. v European Commission*, T-649/17, EU:T:2020:235, *op.cit.* Paragraph 70.

- *Concept of overriding public interest*

The General Court took the opportunity to stress the limits of the concept of ‘overriding public interest’ within the meaning of Article 4 of Regulation (EC) No 1049/2001.

Pursuant to settled case law, private interests, including the exercise of the applicant’s rights of defence in a trial, are irrelevant for the purposes of establishing the existence of an overriding public interest within the meaning of Regulation (EC) No 1049/2001<sup>69</sup>.

Similarly, general considerations pertaining to the applicant’s interest in obtaining compensation for the harm suffered as a result of an infringement of the competition rules are, in principle, insufficient to establish an overriding public interest<sup>70</sup>. Nevertheless, any person seeking compensation for damage suffered as a result of an infringement of the competition rules may establish the need for him/her to have access to any of the documents in the Commission’s file, so that the institution may, on a case-by-case basis, balance the interests justifying the disclosure of such documents and their protection, taking into account all the relevant facts of the case<sup>71</sup>.

- *General presumption of confidentiality*

Pursuant to settled case law, the EU institutions may base their decisions of non-disclosure of requested documents on general presumptions, which apply to certain categories of documents<sup>72</sup>.

The General Court held that the Commission is required, in order to apply the presumption in relation to documents requested that are part of an EU Pilot procedure, to identify in the contested decision the documents covered by the request for access, then to classify them by category or as part of a particular administrative file<sup>73</sup>.

According to the General Court, in the absence of such identification, the presumption of confidentiality would be irrefutable<sup>74</sup> and the Court would not be in the position to exercise its power of judicial review as to whether the Commission was justified in taking the view that the requested documents were part of an EU Pilot procedure<sup>75</sup>.

For the purposes of identifying the relevant documents falling within the scope of a general presumption of confidentiality, the institution may however limit itself to indicating for example: the ‘types or categories of documents [...] identified by its services, or their number

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<sup>69</sup> Judgment in *Giorgio Basaglia v European Commission*, T-727/19, *op.cit.* Paragraphs 84 to 87.

<sup>70</sup> Judgment in *CBA Spielapparate- und Restaurantbetriebs GmbH v European Commission*, T-168/17, *op.cit.* Paragraph 55.

<sup>71</sup> *Ibid.*

<sup>72</sup> See *inter alia*, see judgments of 27 February 2014, *Commission v EnBW*, C-365/12 P, EU:C:2014:112, paragraph 65 and the case-law cited, of 22 January 2020, *MSD Animal Health Innovation and Intervet international v EMA*, C-178/18 P, EU:C:2020:24, paragraph 55 and the case-law cited, and of 5 December 2018, *Campbell v Commission*, T-312/17, EU:T:2018:876, paragraph 28 and the case-law cited.

<sup>73</sup> Judgment in *Liam Campbell v European Commission*, T-701/18, *op. cit.* Paragraph 63.

<sup>74</sup> Judgment in *Liam Campbell v European Commission*, T-701/18, *op. cit.* Paragraph 46.

<sup>75</sup> Judgment in *Liam Campbell v European Commission*, T-701/18, *op. cit.* Paragraph 66.

or date<sup>76</sup>; or, ‘their nature and the institution or administration which drafted them, without disclosing their content’<sup>77</sup>.

### 6.2.2. Clarifications of some procedural rules

The main procedural issues addressed in 2020 by the General Court concerned the unilateral restriction of a wide-scope request and the mandatory nature of the time limits of Regulation (EC) No 1049/2001.

#### ▪ *Unilateral restriction of a wide scope request*

According to settled case law, the institutions may, under specific circumstances, unilaterally restrict the scope of a wide scope request<sup>78</sup>.

The General Court noted in this respect that the nature and content of the documents, and not only the number of pages, are relevant<sup>79</sup>. The mere reference to a number of pages is therefore not sufficient, as such, to assess the workload required by the specific and individual examination of the requested documents<sup>80</sup>.

Moreover, an institution must have genuinely studied all the other possible options and explained in detail, in its decision, the reasons why those various options also involve an unreasonable workload<sup>81</sup>.

The institution relying on the unreasonableness of the task entailed by the request bears the burden of proof in this respect<sup>82</sup>.

A random selection performed by the institution cannot constitute an appropriate basis for the identification of documents which can be assessed in the framework of the unilateral restriction of the scope of a disproportionate request, even in the absence of any indication on the part of the applicant as to a group of documents which might be of particular relevance to him<sup>83</sup>. For, such a selection must result from an objective assessment as to the maximum amount of work that the institution is able to perform within the time limits of the Regulation<sup>84</sup>.

Against this background, the workload that may be relevant to the assessment of the time needed to process an application for access cannot result from an overload linked to the search and retrieval of documents in the institution’s archives, but at most from an overload of the right to examine those documents<sup>85</sup>.

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<sup>76</sup> Judgment in *Liam Campbell v European Commission*, T-701/18, *op. cit.* Paragraph 48.

<sup>77</sup> Judgment in *Liam Campbell v European Commission*, T-701/18, *op. cit.* Paragraph 52.

<sup>78</sup> Judgment in *Giorgio Basaglia v European Commission*, T-727/19, *op.cit.* Paragraphs 41 *et seq.*

<sup>79</sup> Judgment in *Giorgio Basaglia v European Commission*, T-727/19, *op.cit.* Paragraph 52.

<sup>80</sup> Judgment in *Giorgio Basaglia v European Commission*, T-727/19, *op.cit. ibid.*

<sup>81</sup> Judgment in *Giorgio Basaglia v European Commission*, T-727/19, *op.cit.* Paragraph 44.

<sup>82</sup> Judgment in *Giorgio Basaglia v European Commission*, T-727/19, *op.cit.* Paragraph 43.

<sup>83</sup> Judgment in *Giorgio Basaglia v European Commission*, T-727/19, *op.cit. Ibid.*

<sup>84</sup> Judgment in *Giorgio Basaglia v European Commission*, T-727/19, *op.cit.* Paragraph 55.

<sup>85</sup> Judgment in *Giorgio Basaglia v European Commission*, T-727/19, *op.cit.* Paragraph 54.

- *Mandatory nature of the time limits of the Regulation*

The General Court reiterated that the possibility of consultation provided for under Article 6(3) of Regulation (EC) No 1049/2001, in order to find a fair solution, can relate only to the content or number of documents but not the time limits laid down in Articles 7 and 8 of that regulation<sup>86</sup>. Therefore, institutions cannot disregard those time-limits in order to respond favourably to the applicant's willingness to receive deferred replies in batches<sup>87</sup>.

### 6.3. Court cases introduced against the European Commission in 2020<sup>88</sup>

In 2020, seven cases involving the European Commission were brought before the European Courts.

Six of them concern actions introduced before the General Court<sup>89</sup>, one of which was already closed during the course of 2020 with a decision concluding that there was no need to adjudicate<sup>90</sup>.

In parallel, one appeal was introduced before the Court of Justice against a judgment of the General Court, in a case where the European Commission was a party to the proceedings<sup>91</sup>.

The European Commission attentively followed the above-mentioned developments of the case law of the European Courts in 2020.

Indeed, seven out of the 12 cases adjudicated by both the Court of Justice and the General Court in 2020 resulted in full dismissals of the annulment actions against the European Commission's decisions<sup>92</sup>, and the position of the institution therefore prevailed. An additional case was moreover concluded without any need to adjudicate<sup>93</sup>.

The European Commission also took good note of all above-mentioned substantive and procedural clarifications provided by the European Courts in 2020 in relation to Regulation (EC) No 1049/2001.

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<sup>86</sup> *Ibid.* Paragraph 37.

<sup>87</sup> *Ibid.* Paragraph 38.

<sup>88</sup> As of 31 December 2019.

<sup>89</sup> Namely cases *Validity v European Commission*, T-640/20 *op.cit.*; *Pollinis France v European Commission*, T-554/20, *op.cit.*; *Pollinis France v European Commission*, T-371/20, *op.cit.*; *ClientEarth AISBL v European Commission*, T-255/20, *op.cit.*; *JP v European Commission*, T-247/20, *op.cit.*; and *Huhtamaki v European Commission*, T-134/20, *op.cit.*

<sup>90</sup> Namely Order of 14 December 2020, *ClientEarth AISBL v European Commission*, T-255/20, *op.cit.*

<sup>91</sup> Namely case *ViaSat Inc. v European Commission*, C-235/20P, *op.cit.*

<sup>92</sup> Namely judgments in *ClientEarth v European Commission*, C-612/18P *op.cit.*, *PL v European Commission*, T-728/19, *op.cit.*; *Marco Bronckers v European Commission*, T-166/19, *op.cit.*; *Laurence Bonnafous v European Commission*, T-646/18, *op.cit.*; *ViaSat, Inc. v European Commission*, T-734/17, *op.cit.*; *ViaSat, Inc. v European Commission*, T-649/17, *op.cit.*; and *CBA Spielapparate- und Restaurantbetriebs GmbH v European Commission*, T-168/17, *op.cit.*

<sup>93</sup> Namely Order of 14 December 2020, *ClientEarth AISBL v European Commission*, T-255/20, *op.cit.*

As in the previous years, the Secretariat-General, jointly with the Legal Service, regularly organised seminars to update the staff of the European Commission on the recent case law developments.