**Follow-up to the European Parliament non-legislative resolution on the time the European Commission takes to deal with requests for public access to documents**

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2. **Reference number:** 2023/2941 (RSP) / B9-0162/2024 / P9\_TA(2024)0172
3. **Date of adoption of the resolution:** 14 March 2024
4. **Competent Parliamentary Committee:** Committee on Civil Liberties, Justice and Home Affairs (LIBE)
5. **Brief analysis/ assessment of the resolution and requests made in it:**

The European Parliament adopted a resolution on the time the European Commission takes to deal with requests for public access to documents. The European Parliament recalled the basic principles enshrined in the Treaties, in Regulation (EC) No 1049/2001[[1]](#footnote-2) on access to documents, the Statute of the European Ombudsman and the case-law of the EU Courts. This resolution is related to the special report of the European Ombudsman of 21 September 2023 in her strategic inquiry OI/2/2022/OAM. In support of the European Ombudsman’s findings, the Parliament stressed that the EU institutions, including the Commission, adhere to the principle of transparency laid down in the Treaties and Regulation (EC) No 1049/2001 and urged the Commission to implement the European Ombudsman’s recommendations in this area. In this regard, the European Parliament addressed several recommendations to the Commission and requested to be informed about how the Commission plans to comply with the time limits laid down in the relevant EU legislation.

1. **Response to requests and overview of actions taken, or intended to be taken, by the Commission:**

Regarding paragraphs 3 and 6, and the recommendation in paragraphs 12 and 16 on publication of all contracts for the purchase of COVID-19 vaccines, on recording text and instant messages sent or received by staff members in their professional capacity, and on the alleged text messages between the Commission’s President and the CEO of a pharmaceutical company on the purchase of COVID-19 vaccines, the Commission notes that the negotiations with vaccine producers were done in a structured way, via the Emergency Support Instrument, through advance purchase agreements on behalf of the Member States. In particular, the material negotiations of the very complex contracts concluded by the Commission, on behalf of the Member States of the Union, were done in accordance with the procedures envisaged in the agreements concluded with all the Member States[[2]](#footnote-3), mandating the Commission to negotiate with the vaccines producers, through the involvement of a joint negotiation team, composed by representatives of experts from some Member States, and under the control of a Steering Board, composed by representatives of all Member States[[3]](#footnote-4).The Commission took significant steps to ensure transparency in the negotiation process, including the publication of contracts concluded with several manufacturers. The Commission and the European Ombudsman do not disagree regarding the notion of what constitutes a ‘document’ under Regulation (EC) N°1049/2001. The Commission agrees that what matters is the content of a document and recalls that according to Article 2(3) of this regulation, the document must be in the possession of the institution to fall within the framework of this regulation. Any content whatever its medium may in principle constitute a ‘document’ under Regulation (EC) No 1049/2001, provided that: it concerns a matter relating to the policies, activities and decisions falling within the sphere of responsibility of the Commission, and it contains important information that is not short-lived or may involve action or follow-up by the European Commission or one of its departments. The Commission has confirmed in its reply from 29 June 2022 to the Recommendation of the European Ombudsman that the search undertaken by the President’s cabinet for relevant text messages corresponding to the request for access to documents has not yielded any results.

Regarding paragraphs 4, 5, 7 and 9 on the delays the Commission takes to deal with requests for public access to documents, and the recommendations in paragraphs 11, 13, 14, 17 and 18, the Commission would like to reiterate that the European Ombudsman’s finding of maladministration concerns the confirmatory stage of the access to documents procedure, which represents only a limited part of the total applications received by the Commission (4% in 2021 and 5% in 2022). The Commission would like to underline that, as recognised by the European Ombudsman, most applications for access to documents submitted to the Commission were handled in a timely manner. Indeed, the Commission welcomes the European Ombudsman’s statement that in the vast majority of initial applications for access to documents, the maximum time limit of 30 working days was met. The average duration (in working days) for the Commission to take a decision on initial applications for public access in 2021 was 20 days, which is fully in line with deadlines provided for under Regulation (EC) No 1049/2001. The Commission underlines that it receives on average more than 7000 initial requests for access to documents every year, i.e., more than 30 applications per working day, which represents an important workload for all Commission services. Moreover, the documents requested or (partially) disclosed are even more numerous because individual applications may concern several documents or even entire files concerning a specific subject or procedure. In case of insufficiently precise or excessive applications, the Commission also has to confer with applicants in accordance with Articles 6(2) and 6(3) of Regulation (EC) No 1049/2001.

Furthermore, regarding paragraphs 4, 5, 7 and 9, and the recommendations in paragraphs 11, 13, 14, 17 and 18, the Commission receives the highest number of applications for public access to documents of all the institutions. This trend is confirmed in the annual report for the year 2022. The number of initial applications received by the Commission in 2022 reached 7410. As regards confirmatory applications requesting a review by the Commission of initial replies fully or partially refusing access, their number reached 418 in 2022. According to the most recent statistics, the number of applications registered in 2023 reached 7274 at the initial stage and 599 at the confirmatory stage, which reflects a striking increase of more than 43% compared with the confirmatory applications received in 2022. Dealing with an ever-increasing number and complexity of applications logically poses some challenges for any public administration. The Commission has already provided detailed elements in response to the European Ombudsman’s strategic inquiry OI/2/2022/OAM. The Commission welcomes most of the European Ombudsman’s recommendations that largely correspond to its current practices. The Commission is aware that certain delays occur at the confirmatory stage due to the complexity and sensitivity of the requested documents, as well as to the sheer number of documents requested by applicants and their volume. In this respect, the Commission has already reinforced the team in charge of confirmatory applications within its Secretariat-General. Building on a good record of proactive publication in relation, for example, to the Brexit or trade negotiations, the documents related to the purchase of vaccines against COVID-19 or to the Recovery and Resilience Facility, the Commission will continue to proactively anticipate public interest and publish all necessary information on its websites and multiple registers.

Regarding paragraph 8 on the use of exceptions laid down in Article 4 of Regulation (EC) No 1049/2001, the statistics confirm the strict interpretation of the exceptions by the Commission, as requested documents were fully or partially disclosed in more than 77% of the cases at the initial stage and wider or even full access was granted in more than a half of the cases reviewed at the confirmatory stage in 2022. The data not only confirm the openness of the Commission, but also the commitment of the institution to the right of access to documents as part of its overall transparency policy. The Commission would also like to stress that the applicants are duly notified regarding the available remedies. In this respect, it is noteworthy that, in 2022, the European Ombudsman found instances of maladministration in only two of the 44 closed cases. In the same vein, in 2022, the General Court handed down 26 judgments or orders in proceedings to which the Commission was a party in relation to decisions concerning the right of public access to documents and it ordered the full or partial annulment in only three cases. This further confirms the high standards of the Commission’s implementation of Regulation (EC) No 1049/2001.

Regarding paragraph 10 on proactive publication of documents, the Commission proactively publishes on different websites and registers a wide variety of legal, policy, administrative and other documents. Many are available on the Register of Commission documents (RegDoc), Register of Delegated Acts and other corporate registers or EUR-Lex. The Commission has already taken steps in improving its systems for proactive publication and requests handling. These developments are reflected in the recent annual reports on the implementation of Regulation (EC) No 1049/2001, such as the updated version of RegDoc which became operational on 17 May 2021. It features new search functionalities, improved user interface and improved presentation of documents. As of 2022, new document types (e.g., Commission and High Representative Joint Acts) started being published on RegDoc. Moreover, the Commission launched in September 2022 its current system for handling access to documents applications, namely ‘Electronic AccesS to European Commission Documents’ (EASE). It consists of a new online portal allowing citizens to – among other functionalities – submit initial and confirmatory applications, and a new case-management system allowing the Commission staff to handle these applications. Following the (partial) disclosure, EASE allows the Commission staff, in contrast to the old GestDem system, to publish the disclosed documents on this new online portal. This feature further reinforces the principle that documents disclosed under Regulation (EC) No 1049/2001 are disclosed to the public at large.

Regarding the recommendation in paragraph 15, calling for the Commission’s proactive publication of documents on statistics, delays and handling of applications, the Commission proactively publishes its annual reports on the implementation of Regulation (EC) No 1049/2001 on the dedicated Europa webpage[[4]](#footnote-5). These reports contain statistics on the applications received and answered, including the level of access granted and the exceptions applied. The published statistics also cover the distribution of applications among the Commission departments and the social and occupational profile and the geographical origin of applicants. Moreover, the statistics on delays provided by the Commission to the European Ombudsman in the framework of the strategic inquiry OI/2/2022/OAM are available to the public on the European Ombudsman’s website[[5]](#footnote-6).

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](http://data.europa.eu/eli/reg/2001/1049/art_4/oj)). [↑](#footnote-ref-2)
2. The agreements signed with the Member States follow the model approved in the Commission Decision C(2020) 4192 final of 18.6.2020 approving the agreement with the Member States on procuring Covid-19 vaccines on behalf of the Member States and related procedures and attached as an annex thereto. [↑](#footnote-ref-3)
3. Said agreements were concluded on the basis of Article 4 paragraph 5, point (b) of Council Regulation (EU) 2016/369 of 15 March 2016 on the provision of emergency support within the Union (OJ L 70, 16.3.2016, p.1) as amended by Council Regulation (EU) 2020/521 of 14 April 2020 activating the emergency support under Regulation (EU) 2016/369, and amending its provisions taking into account the COVID‐19 outbreak (OJ L 117, 15.4.2020, p. 3). [↑](#footnote-ref-4)
4. <https://commission.europa.eu/publications/annual-reports-commission-application-regulation-10492001_en> [↑](#footnote-ref-5)
5. <https://www.ombudsman.europa.eu/en/special-report/en/175425> [↑](#footnote-ref-6)