Public access to documents - annual report for the years 2019-2021

2022/2015(INI) - 13/07/2023 - Text adopted by Parliament, single reading

The European Parliament adopted by 481 votes to 9, with 3 abstentions, a resolution on public access to documents - annual report 2019-2021.

Recent developments

Parliament noted that the Commission is the institution which receives the highest number of initial requests for public access to documents (7445 in 2019, 8001 in 2020 and 8420 in 2021), followed by the Council (2567 in 2019, 2321 in 2020 and 2083 in 2021) and then Parliament (645 in 2019, 442 in 2020 and 499 in 2021). It acknowledged that the institutions' response rate is generally positive but pointed out that **regular delays and unfounded refusals to disclose documents**, even in part, undermine citizens' right to scrutinise the European institutions.

Members are concerned about the frequent use of exceptions to refuse full access to documents and point out that, according to the European Ombudsman, restrictions on access to documents, particularly legislative documents, must be exceptional and reduced to what is strictly necessary.

Parliament noted with concern that in 2021, following a request for public access to text messages exchanged between the President of the Commission and the CEO of a pharmaceutical company concerning the Commission's purchase of COVID 19 vaccines, the Commission refused to recognise that these messages constituted ‘documents’ within the meaning of Regulation (EC) No 1049/2001.

It urged the Commission to **record text messages** relating to its policies, activities and decisions.

Members also regretted Parliament's difficulty in obtaining full and detailed information from the Commission on the implementation and application of EU law. They deplored the lack of proactive publication of updated summaries of the latest stages of each infringement procedure and the fact that the Commission does not proactively publish statistics on the effectiveness of EU policies, particularly those relating to justice and home affairs.

Parliament reiterated the importance of transparency and access to documents in **preventing and combating corruption** and in ensuring that those in public office assume their responsibilities. It strongly deplored the fact that there is still no complete and public overview of **EU funding granted to third countries** in order to facilitate cooperation on migration issues.

Recommendations

Members regretted Parliament's repeated refusal to grant public access to documents, even after this practice had been described as maladministration by the Ombudsman and called on it to set an example. They called for greater transparency, including better access to documents, to ensure democratic scrutiny.

Welcoming the Commission's intention to improve transparency within the Union by applying the principle of **‘transparency by default’**, Parliament called on the Commission not to consider any proposal for the revision of Regulation (EC) No 1049/2001 that would lower standards of transparency and access to documents. The Council and Commission are invited to resume negotiations with the other institutions on the basis of the Commission's 2008 and 2011 proposals.

According to Members, any reform should address the key issues of extending the scope of Regulation (EC) No 1049/2001 to all EU institutions and bodies, the scope of grounds for refusing access to documents, the definition of 'document', the public interest test, transparency of the legislative process and opposition to block exemptions, as well as incorporating the case law of the CJEU and the ECHR. In the light of recent scandals, Members called for clear rules and criteria to be drawn up regarding requests for **in camera sessions** within the EU institutions.

The resolution stressed that transparency and full access to documents held by the institutions **must be the rule** and that exceptions to this rule must be interpreted strictly, taking into account the overriding public interest in disclosure. Members called on all EU institutions, bodies, offices and agencies to:

- **proactively publish documents on their websites** and make it easier for citizens to find these documents in order to allow democratic scrutiny;

- pursue a policy of **'transparency by design'** and publish documents linked to legislative files proactively, including documents that form part of or are related to legislative procedures, within a reasonable time frame and in a user-friendly and accessible way. **Trilogue documents**, such as agendas, summaries of outcomes, minutes and general approaches in the Council, are related to legislative procedures and should be treated as legislative documents;

- be more proactive in publishing documents and **statistics** on their handling of requests for access to documents;

- speed up their work on establishing a dedicated and **user-friendly joint database** on the state of play of legislative files;

- consider **increasing the number of documents** that they make directly available in their public registers and make documents easier to find and more accessible on their Internet pages;

- ensure **compliance with deadlines**, provide more data on compliance with deadlines and provide applicants with explanations for non-compliance with deadlines obtain access to the documents requested.

Parliament insisted that the **systematic publication of the mandate for starting trilogue negotiations** and of the Council's final position endorsing the outcome of negotiations is the bare minimum, and that in order to mirror Parliament's transparency in legislative negotiations, the Council should also systematically record the identities of the Member States when they express their positions in Council.

For its part, Parliament's Bureau is invited to develop a user-friendly system in which, for each roll-call vote, the text voted on and the voting results for each group and Member are visible.

Noting in practice that there is no effective remedy to a negative decision on a request for access to documents, Members called on the EU institutions to adopt swifter, more accessible and further simplified procedures for handling complaints about refusals to grant access and measures to ensure that citizens can challenge decisions when needed.