REPORT ON THE APPLICATION IN 2021 OF REGULATION (EC) No 1049/2001 REGARDING PUBLIC ACCESS TO EUROPEAN PARLIAMENT, COUNCIL AND COMMISSION DOCUMENTS

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BACKGROUND

The right of access to documents¹ held by the European Research Council Executive Agency (ERCEA) is established in Article 15 (3) of the Treaty on Functioning of the European Union and Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 on public access to European Parliament, Council and Commission documents.

ERCEA Steering Committee adopted detailed rules to implement the provisions of Regulation (EC) 1049/2001².

The Agency shall publish yearly statistical information based on the number of requests, number of refusals and the reason of such refusal to meet the obligation of Article 17(1) of Regulation 1049/2001 and Article 11 of the Steering Committee Decision.

In 2021, ERCEA provided partial access to a number of documents in its possession, following specific requests submitted under Regulation (EC) 1049/2001. This was complemented by the proactive publication of a wide range of information and documentation on the Agency’s external web site ERC: European Research Council | (europa.eu). The section ‘Document Library’ of the ERC website provides a list of documents immediately downloadable or links to already existing documents under different categories of documents that are regularly fed by the relevant ERCEA services.

This report provides a summary of statistical data of how the ERCEA implemented the above-mentioned regulation during the reporting period. The statistics reflect the number of applications for access to documents received and replies provided. However, they do not reflect the number of documents actually requested and partially disclosed, which were indeed more numerous. The applicants requested access to several documents at the same time in one application.

The requests can be posted either via the electronic submission tool provided by the ERCEA on the ERC website (http://erc.europa.eu³) or directly by e-mail to the ERCEA Access to documents functional mailbox⁴. A written request for public access to the ERCEA’s documents by regular mail is also possible. In principle, the same means of communication chosen by the applicant is used by the ERCEA for the reply and for the delivery of the pertinent documents. However, following the procedure put in place during the period of large-scale teleworking due to the Covid-19 outbreak, all replies, which should normally be sent via registered post, have been sent only by e-mail with an explicit request for an acknowledgment of receipt from the applicants.

¹ “Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents” of the Union's institutions, bodies, offices and agencies, whatever their medium.
³ https://erc.europa.eu/content/send-us-message
⁴ ERC-ACCESS-TO-DOCUMENTS@ec.europa.eu
APPLICATIONS FOR ACCESS TO DOCUMENTS

1. INITIAL APPLICATIONS

1.1. Number of initial applications received and handled in 2021

In 2021, ERCEA received 42 initial applications out of which 3 were handled under Regulation (EC) No 1049/2001 (‘requests for access to documents’) and 39 on the basis of the Code of Good Administrative Behaviour5 (‘requests for information’). 2 out of 3 initial requests for access to documents have been grouped together in one single reply so that ERCEA eventually issued 2 replies under Regulation (EC) No 1049/2001 and 39 under the Code of Good Administrative Behaviour.

1.2. Type of access to document replies given at initial stage in 2021

ERCEA has the right to refuse access to documents which, if disclosed, would harm one or several of the public or private interests listed in Regulation (EC) No 1049/2001. The documents in the possession of the Agency may be covered in whole, or in part, by the exceptions to public access defined in Article 4 of Regulation (EC) No 1049/2001. Any refusal, whether full or partial, must be justified under at least one of these exceptions.

In some cases, the EU Courts have recognised a general presumption of non-disclosure that may be also used by ERCEA to refuse access, in particular to documents relating to OLAF investigations, pending court cases, bids submitted by other tenderers in a procurement procedure, grant proposals submitted by other candidates or written questions asked in staff selection procedures.

In 2021, ERCEA granted partial access to documents requested in all 3 initial requests for access to documents (i.e. 2 partial replies at initial stage). Although, it should be noted that there were also some documents asked under each of these requests to which access was rejected based on an exception laid down in Article 4 of Regulation (EC) No 1049/2001 as outlined in point 3 below or some of the requested documents were not held by ERCEA.

2. CONFIRMATORY APPLICATIONS

In the event of a total or partial refusal to grant access to requested documents or in case of failure by ERCEA to reply within the time-limit prescribed in Regulation (EC) No 1049/2001, the applicant may introduce to the ERCEA Director a request for review, i.e. a confirmatory application.

2.1. Number of confirmatory applications received and handled in 2021

2.2. Type of replies given at the confirmatory stage in 2021

In 2021, 1 initial reply challenged by confirmatory application was fully confirmed at the confirmatory stage, i.e. access refused to a number of documents not disclosed at the initial stage.
3. INVOKED EXCEPTIONS\textsuperscript{6} 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 Regulation. Any refusal, whether full or partial, must be justified under at least one of these exceptions.

3.1. Initial stage

In 2021, the protection of privacy and the integrity of the individual\textsuperscript{7} and the protection of commercial interests\textsuperscript{8} were, as in previous years, the most invoked exceptions for partial or full refusals to the right of access based on Article 4 of Regulation (EC) No 1049/2001. In both 2 replies, these exceptions were relied upon to refuse access to some documents and to provide partial access to others. The exception protecting public security\textsuperscript{9} was also invoked in 1 reply to refuse access to some of the requested documents. This exception was not invoked in any of the previous years.

\textsuperscript{6} On the basis of Article 4 of Regulation (EC) No 1049/2001

\textsuperscript{7} This exception is provided under Article 4 (1) (b) of Regulation (EC) No 1049/2001: “The institutions shall refuse access to a document where disclosure would undermine the protection of: (...) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.”

\textsuperscript{8} This exception is provided under the first indent of Article 4 (2) of Regulation (EC) No 1049/2001: “The institutions shall refuse access to a document where disclosure would undermine the protection of: - commercial interests of a natural or legal person, including intellectual property, [...] unless there is an overriding public interest in disclosure.”

\textsuperscript{9} This exception is provided under the first indent of Article 4 (1) (a) of Regulation (EC) No 1049/2001 “The institutions shall refuse access to a document where disclosure would undermine the protection of: (...) the public interest as regards (...) public security”.
3.2. Confirmatory stage

The protection of *privacy and integrity of the individual*\(^{10}\) as well as *commercial interest*\(^{11}\) continued to be in 2021, like in the previous years, the main ground for confirming a full refusal of access. In addition to these 2 exceptions, the protection of *public interest as regards public security*\(^{12}\) was also involved this year to confirm the refusal of some documents in 1 confirmatory reply.

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\(^{10}\) Article 4 (1) (b) of Regulation (EC) No 1049/2001

\(^{11}\) First indent of Article 4 (2) of Regulation (EC) No 1049/2001

\(^{12}\) First indent of Article 4 (1) (a) of Regulation (EC) No 1049/2001
In October 2021, Ombudsman has issued a short guide for the EU institutions, bodies, offices and agencies setting out policies and practices to give effect to the right of public access to documents. This guide covers in ten points what the Ombudsman considers to be good administrative practice in the area of access to documents. The Ombudsman encourages the EU administration to apply these practices and policies for enhancing transparency in the EU. ERCEA is part of a task force set by all executive agencies that is currently analysing the implication of this guide with the aim to reach an aligned response to the ten recommendations issued by the Ombudsman.