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REPORT FROM THE COMMISSION

**on the application in 2022 of Regulation (EC) No 1049/2001 regarding public access to
European Parliament, Council and Commission documents**

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1. INTRODUCTION

This annual report is drafted in accordance with Article 17(1) of Regulation (EC) No 1049/2001¹ regarding public access to European Parliament, Council and Commission documents (hereafter ‘Regulation (EC) No 1049/2001’). It covers the European Commission’s implementation in 2022 of Regulation (EC) No 1049/2001 and is based on statistical data, which are summarised in the Annex². It also refers to the findings of the European Ombudsman concerning the European Commission's implementation of Regulation (EC) No 1049/2001 and the rulings handed down by the EU Courts.

Transparency, integrity, and accountability are the essential prerequisites of a democracy based on the rule of law. They are key principles to promote good governance and build trust in the policy-making process, thereby enhancing the legitimacy and credibility of public institutions. Safeguarding the effectiveness of the citizens’ right of access to documents held by the institutions is a cornerstone of the European Commission’s pledge for transparency³.

The year 2022 began in a climate of hope for the post-pandemic recovery, supported by the recovery instrument NextGenerationEU. However, since 24 February 2022, Russia’s unprovoked and unjustified military aggression against Ukraine has influenced the number and nature of the specific requests submitted under Regulation (EC) No 1049/2001.

The statistics reflect the number of applications received and replies provided in 2022⁴. They provide more accurate data compared to previous years, following subsequent regular encoding corrections⁵. The data on cases in which the requested documents were fully or partially disclosed, further detailed in chapter 4, confirm the European Commission’s commitment to the right of access to documents as part of its overall transparency policy.

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.

Confirmatory requests are dealt with by the Secretariat-General’s Unit for ‘*Transparency, Document Management and Access to Documents*’, so as to ensure an independent administrative review of the replies given at the initial stage.

The Unit also managed GestDem – the previous European Commission-wide internal IT system for handling initial and confirmatory requests for access to documents. In parallel, during 2022, the European Commission finalised developing its current system for handling

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, O.J. L 145, 31.5.2001, p. 43-47, p. 47

² Unless otherwise indicated, the statistics presented in this Report are based on figures extracted from the European Commission IT applications on 31 December 2022, as updated following subsequent encoding corrections. Percentages in the narrative part of the Report are rounded to the closest decimal.

³ https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/new-push-european-democracy_en

⁴ The statistics do not reflect the number of documents requested or (partially) disclosed which were far more numerous because individual applications may concern several documents or even entire files concerning a specific subject or procedure.

⁵ For this reason, the figures provided in this report and the previous ones may slightly differ.

such requests through an electronic online portal, namely ‘Electronic AccesS to European Commission Documents’ (or ‘EASE’). The Commission launched EASE in September 2022. It consists of two parts:

- (1). a new online portal allowing citizens to – among other functionalities – learn more about access to documents, submit initial and confirmatory applications, receive guidance, follow ongoing and past cases, manage their personal data, communicate with the Commission, receive the reply electronically, search for documents disclosed to other applicants⁶, and;
- (2). a new case-management system allowing the Commission staff to register, attribute and handle the applications for access to documents.

The new system has now replaced the old GestDem system and brings efficiency gains and contributes to making the whole process of submitting and handling applications for access to Commission documents more automatised, clearer and transparent, both for citizens and the Commission.

The Commission departments are supported by the Historical Archives Service (HAS) in cases of access to documents applications relating to archives of previous Commissioners and their Cabinets. In 2022 HAS provided assistance in 145 cases⁷, mostly to the Secretariat-General (43) and the Directorates-General for Competition (21), Education, Youth, Sport and Culture (20), Justice and Consumers (19), Human Resources and Security (19) and Trade (17).

2. MAKING INFORMATION AND DOCUMENTS AVAILABLE THROUGH REGISTERS AND INTERNET SITES

The European Commission proactively publishes a wide variety of legal, policy, administrative and other documents on different websites and registers⁸. Many such documents are available on the Register of Commission documents, Register of delegated and implementing 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 2022, 12,196 new documents were added to RegDoc (see Annex – Table 1), falling within the following categories: C, COM, JOIN, OJ, P, PV, SEC or SWD⁹.

⁶ <https://www.ec.europa.eu/transparency/documents-request>

⁷ Compared to 175 in 2021.

⁸ The list of sources is available e.g., via https://commission.europa.eu/about-european-commission/service-standards-and-principles/transparency/access-documents/how-access-commission-documents_en.

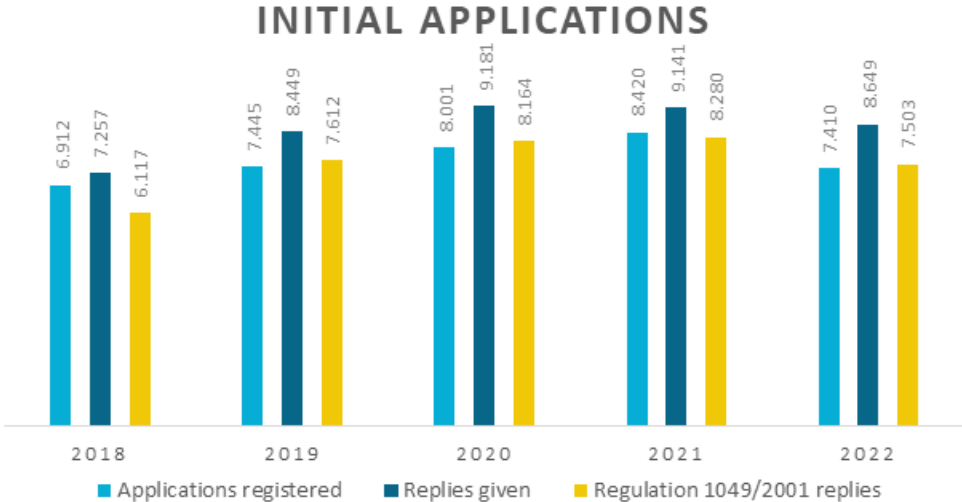
⁹ Namely, C: Autonomous acts of the Commission; COM: Commission legislative proposals and other documents communicated to other institutions, with their preparatory papers; JOIN: Commission and High Representative Joint Acts; OJ: Agendas of Commission meetings; P: Decisions by the President of the Commission; PV: Minutes of Commission meetings; SEC: Commission documents that cannot be classified in any of the other series; SWD: Commission staff working documents.

In 2022, the number of visitors of the ‘Access to Documents’ website on *Europa*¹⁰ reached 13,966. The number of page views reached 32,685 (see Annex – Table 2).

3. ANALYSIS OF THE APPLICATIONS FOR ACCESS TO DOCUMENTS

3.1. Number of applications¹¹ (Annex – Tables 3 and 4)

As illustrated by the graph below, in 2022, the number of initial applications reached 7,410. The European Commission provided 7,503 replies under Regulation (EC) No 1049/2001 and 8,649 replies in total¹².



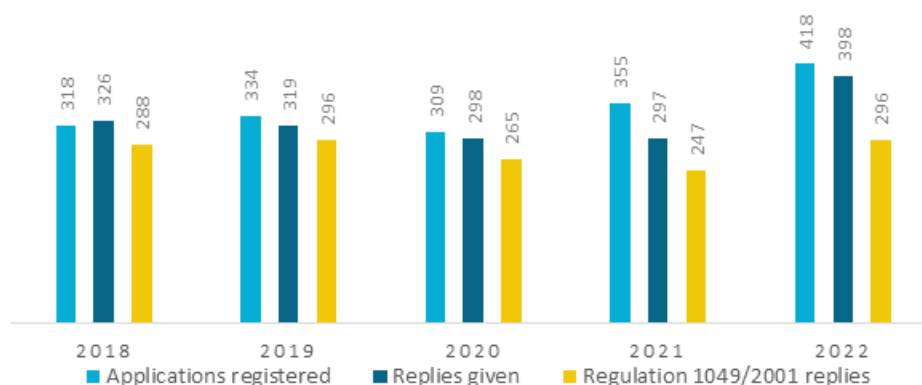
As regards confirmatory applications requesting a review by the European Commission of initial replies fully or partially refusing access, their number reached 418 in 2022, which reflects a striking increase of almost 17.8% in comparison with 2021. The European Commission provided 296 replies under Regulation (EC) No 1049/2001 and 398 replies in total¹¹.

¹⁰ Access to documents: https://commission.europa.eu/about-european-commission/service-standards-and-principles/transparency/access-documents_en.

¹¹ Further statistics on social and occupational profile and the geographical origin of applicants are provided in tables 6 and 7 of the Annex.

¹² The number of replies 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, etc.) or even closures following the applicants’ failure to provide requested clarifications or to fulfil procedural requirements.

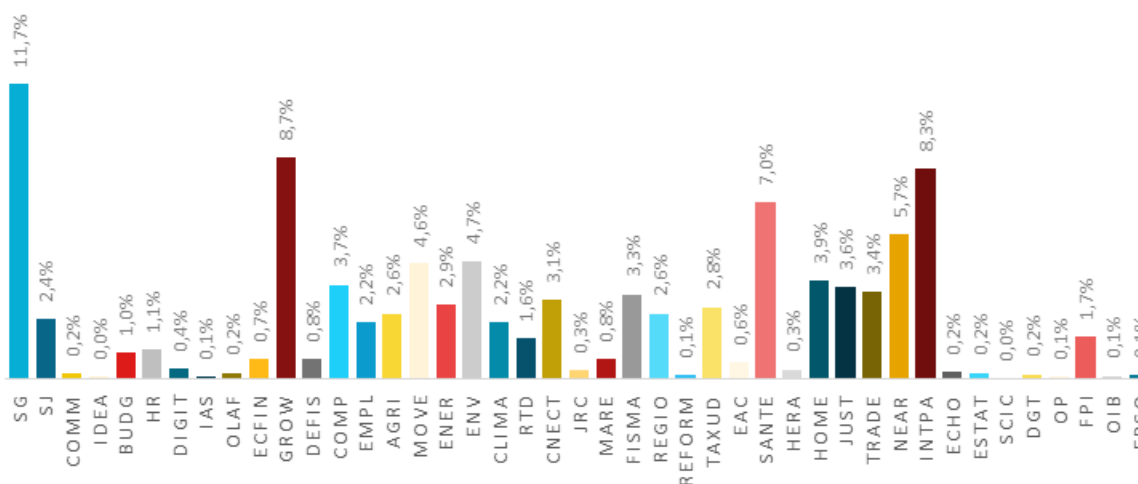
CONFIRMATORY APPLICATIONS



3.2. Proportion of applications per European Commission department (Annex – Table 5)¹³

In 2022, the Secretariat-General received the highest proportion of initial applications (11.7%). It was followed by the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (8.7%), the Directorate-General for International Partnerships (8.3%), the Directorate-General for Health and Food Safety (7%), and the Directorate-General for European Neighbourhood and Enlargement Negotiations (5.7%). The remaining European Commission departments each accounted for less than 5% of all initial applications.

INITIAL APPLICATIONS 2022

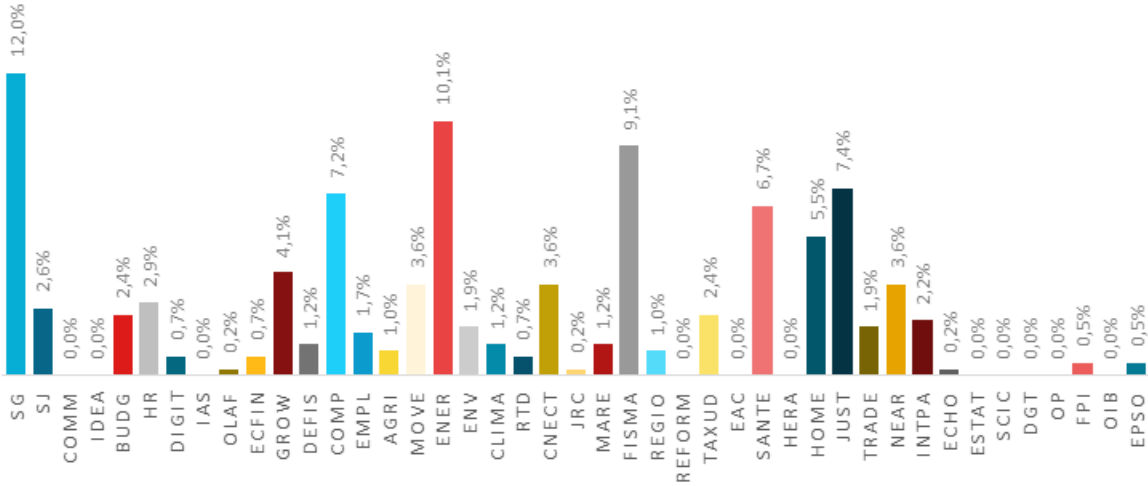


In 2022, the highest proportion of confirmatory applications was submitted in relation to cases handled at the initial stage by the Secretariat-General (12.0%). It was followed by the

¹³ 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 were recorded in GestDem or EASE. Applications for access to documents concerning its 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. Moreover, it should be stressed that, since the creation of the European External Action Service (EEAS), only documents of the Service for Foreign Policy Instruments are held by the European Commission.

Directorate-General for Energy (10.1%), the Directorate-General for Financial Stability, Financial Services and Capital Markets Union (9.1%), the Directorate-General for Justice and Consumers (7.4%), the Directorate-General for Competition (7.2%), the Directorate-General for Health and Food Safety (6.7%), and the Directorate-General for Migration and Home Affairs (5.5%). The remaining European Commission departments each accounted for less than 5% of all confirmatory applications.

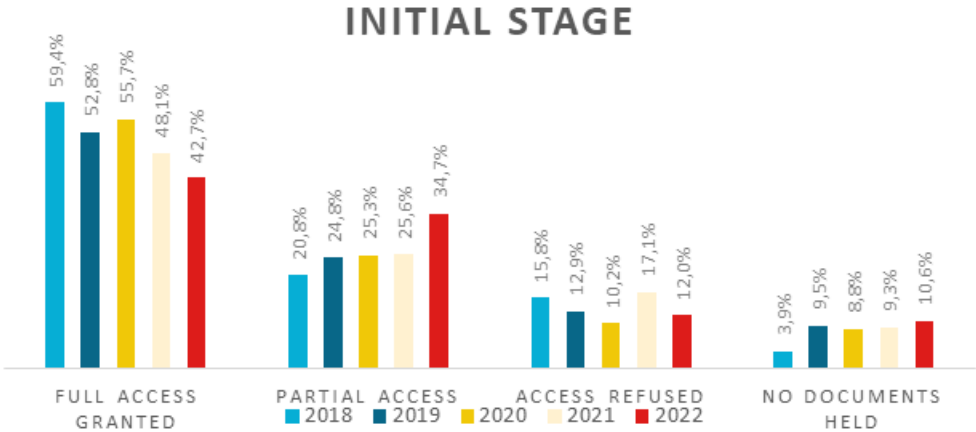
CONFIRMATORY APPLICATIONS 2022



4. APPLICATION OF EXCEPTIONS TO THE RIGHT OF ACCESS¹⁴

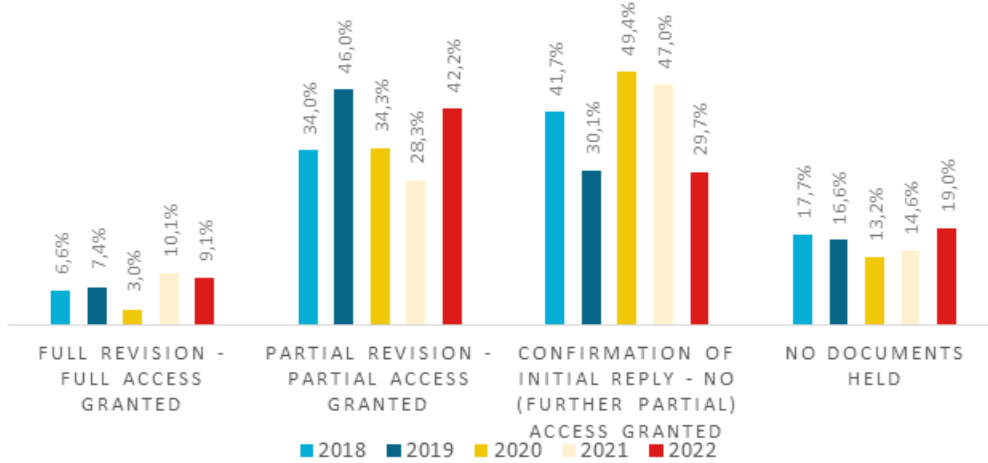
The right of access provided in Regulation (EC) No 1049/2001 is subject to several specific exceptions, set forth in Article 4 of the Regulation. Any refusal, whether full or partial, must be justified under at least one of these exceptions.

4.1. Types of access provided (Annex – Tables 8 and 9)



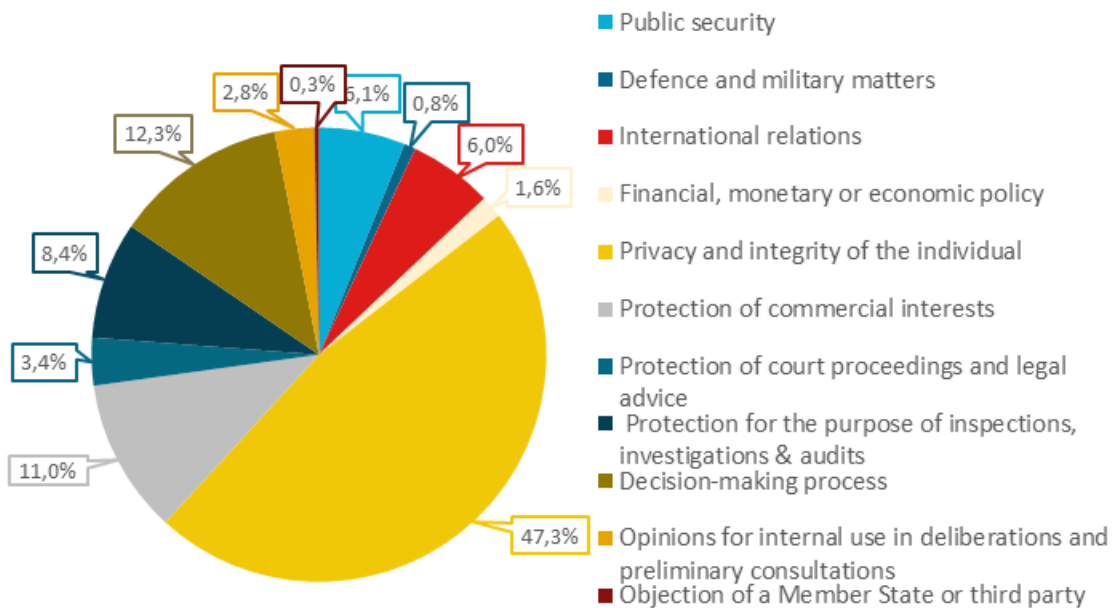
¹⁴ The data for 2022 in chapter 4 cover only replies given until 23 September 2022 when the data from the decommissioned internal access to documents application GestDem have been transferred to the new application EASE. The data encoded in EASE will be reflected in the forthcoming annual reports.

CONFIRMATORY STAGE



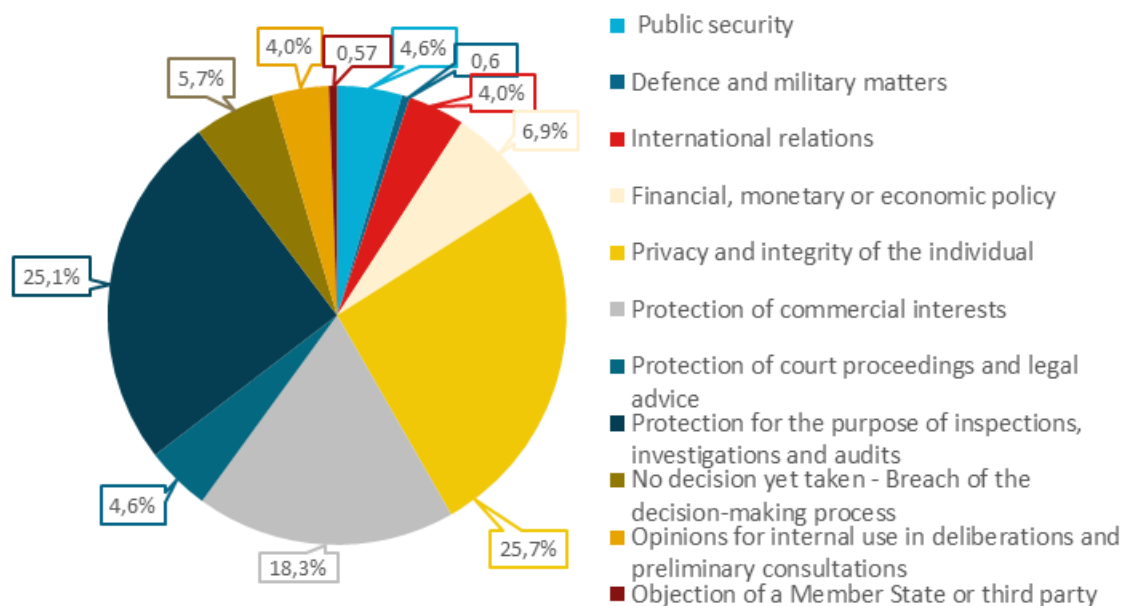
4.2. Invoked exceptions to the right of access¹⁵ (Annex – Table 10)

INITIAL STAGE 2022



¹⁵ Based on Article 4 of Regulation (EC) No 1049/2001. The category ‘Objection of a Member State or third party’ is no longer used as it does not constitute an exception within the meaning of Article 4 of Regulation (EC) No 1049/2001. Nevertheless, it still appears as the raw data available did not in all cases enable a ventilation in accordance with the exceptions of Article 4 of Regulation (EC) No 1049/2001.

CONFIRMATORY STAGE 2022



5. COMPLAINTS TO THE EUROPEAN OMBUDSMAN

In 2022, the European Ombudsman opened 56 new enquiries where access to documents was either the main or a subsidiary part of the complaint, compared to 41 in 2021, and closed 44 complaints, compared to 32 in 2021¹⁶.

Against this background, in 2022, the European Ombudsman found instances of maladministration in two of the 44 closed cases¹⁷. The remaining 42 cases were closed without any remarks or suggestions for improvement.

6. NEW CASE-LAW ON ACCESS TO DOCUMENTS

6.1. The Court of Justice

In 2022, the Court of Justice handed down two orders¹⁸ and one judgment¹⁹ 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.

¹⁶ The statistics concern the European Ombudsman cases for all European Commission departments, except the European Anti-Fraud Office.

¹⁷ In case 1316/2021, the complainant sought access to text messages and other documents concerning discussions between the Commission President and the CEO of a pharmaceutical company on the purchase of COVID-19 vaccines. The Commission took the view that text messages do not fulfil its internal document registration criteria due to the short-lived nature of their content. The Ombudsman took the view that the fact that the Commission did not identify and assess these messages constituted maladministration. In case 211/2022, the complainant sought access from the Commission, *inter alia*, to emails from its representatives based in Greece concerning the migration situation in two hotspots. The Commission confirmed that the emails requested by the complainant no longer existed, as they were deleted in line with the applicable retention policy and that they did not fulfil the document registration criteria. The Ombudsman took the view that the fact that the Commission did not identify and assess these emails that still existed at that time constituted maladministration.

¹⁸ Orders of 1 February 2022, *ViaSat, Inc. v European Commission*, C-235/20 P, EU:C:2022:94; of 19 May 2022, *TUIfly GmbH v European Commission*, C-764/21 P, EU:C:2022:407.

In one case, following the applicant's decision to discontinue the proceedings, the Court of Justice ordered the removal of the case from the Register of the Court²⁰.

In one case, it dismissed the appeal as being, in part, manifestly inadmissible and, in part, manifestly unfounded²¹.

In one case, it set aside the order of the General Court to the extent that, by that order, the General Court dismissed the action as inadmissible, referred the case back to the General Court and dismissed the appeal as to the remainder²².

6.1.1. Clarifications of some procedural rules

The Court of Justice restated that the applicant is not required to explicitly refer to Regulation (EC) No 1049/2001 for the application for access to documents to be dealt with under this Regulation, even when the requested documents pertain to investigations governed by another specific legislation to which the applicant may have referred²³.

6.2. The General Court

In 2022, the General Court handed down 26 judgments or orders in proceedings to which the European Commission was a party in relation to decisions concerning the right of public access to documents under Regulation (EC) No 1049/2001²⁴, compared to 11 in 2021.

The action for annulment was dismissed in seven cases²⁵. In five cases, the General Court held that there was no need to adjudicate²⁶. In six cases, the action was dismissed as

¹⁹ Judgment of 13 January 2022, *Liviu Dragnea v European Commission*, C- 351/20 P, EU:C:2022:8.

²⁰ Order in *ViaSat, Inc. v European Commission*, C-235/20 P, *op.cit.*

²¹ Order in *TUIfly GmbH v European Commission*, C-764/21 P, *op.cit.*

²² Judgment in *Liviu Dragnea v European Commission*, C- 351/20 P, *op.cit.*

²³ Judgment in *Liviu Dragnea v European Commission*, C- 351/20 P, *op.cit.* Paragraphs 71-75.

²⁴ Orders of 2 June 2022, *Bertalan Tóth v European Commission*, T-17/22; of 17 August 2022, *Edward William Batchelor v European Commission*, T-85/18; of 8 November 2022, *Hahn Rechtsanwälte PartG mbB v European Commission*, T-87/22; of 8 June 2022, *Hungary v European Commission*, T- 104/22 R; of 25 March 2022, *Hans-Wilhelm Saure v European Commission*, T-151/21, EU:T:2022:208; of 6 April 2022, *Hans-Wilhelm Saure v European Commission*, T-154/21, EU:T:2022:231; of 12 October 2022, *Hans-Wilhelm Saure v European Commission*, T-165/22; of 18 March 2022, *Hans-Wilhelm Saure v European Commission*, T-232/21; of 5 October 2022, *Andrea Homoki v European Commission*, T-517/19 INTP; of 13 May 2022, *Patrick Swords v European Commission*, T-586/21, EU:T:2022:294; of 22 November 2022, *Validity Foundation v European Commission*, T-640/20; of 12 May 2022, *ClientEarth AISBL v European Commission*, T-661/21, EU:T:2022:286; of 1 March 2022, *Smart Kid S.A. v European Commission*, T-712/21; of 14 September 2022, *Liviu Dragnea v European Commission*, T- 738/18 RENV; of 6 July 2022, *ClientEarth AISBL v European Commission*, T-792/21; and judgments of 19 October 2022, *'Sistem ecologica' production, trade and services d.o.o. Srbac v European Commission*, T-81/21, EU:T:2022:641; of 2 March 2022, *Huhtamaki Sàrl v European Commission*, T-134/20, EU:T:2022:100; of 28 September 2022, *Agrofert, a.s. v European Parliament*, T-174/21, EU:T:2022:586; of 5 October 2022, *Ondřej Múka v European Commission*, T-214/21, EU:T:2022:607; of 5 October 2022, *Giorgio Basaglia v European Commission*, T-257/21, EU:T:2022:608; of 14 September 2022, *Pollinis France v European Commission*, Joined Cases T-371/20 and T- 554/20, EU:T:2022:556; of 7 September 2022, *Hans-Wilhelm Saure v European Commission*, T-448/21, EU:T:2022:525; of 6 April 2022, *Hans-Wilhelm Saure v European Commission*, T-506/21, EU:T:2022:225; of 12 October 2022, *Hans-Wilhelm Saure v European Commission*, T-524/21, EU:T:2022:632; of 1 June 2022, *Algebris (UK) and Anchorage Capital Group v European Commission*, T-570/17, EU:T:2022:314; of 7 September 2022, *Hans-Wilhelm Saure v European Commission*, T-651/21, EU:T:2022:526.

²⁵ Judgments in *'Sistem ecologica' production, trade and services d.o.o. Srbac v European Commission*, T-81/21, *op.cit.*; *Ondřej Múka v European Commission*, T-214/21, *op.cit.*; *Giorgio Basaglia v European Commission*, T-257/21, *op.cit.*; *Hans-Wilhelm Saure v European Commission*, T-448/21, *op.cit.*; *Hans-Wilhelm Saure v European Commission*, T-506/21,

inadmissible²⁷ or manifestly inadmissible²⁸. In one case, it held that there was no need to adjudicate and dismissed the remainder of the action²⁹. In two cases, it held that there was no need to adjudicate, and the action was dismissed as inadmissible³⁰ or manifestly inadmissible³¹.

In one case, it ordered the annulment of the decision³². In one case, it held that there was no need to adjudicate for part of the claim, ordered the annulment of the contested decision in so far as it refused to grant access to the documents concerned, and dismissed the remainder of the action³³. In one case, it ordered the annulment of the contested decision and dismissed the action as to the remainder³⁴.

In one case, following the applicant's decision to discontinue the proceedings, it ordered the removal of the case from the Register of the General Court³⁵.

In one case, it suspended the decision of the European Commission concerning confirmatory application for public access to documents originating from the Hungarian authorities in so far as that decision grants access to documents originating from those authorities³⁶.

In the framework of this body of case-law developed in 2022, 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 2022, the substantive clarifications issued by the General Court essentially revolved around the application of the exceptions relating to the protection of commercial interests³⁷, of court proceedings³⁸, of legal advice³⁹, and of the institution's decision-making process⁴⁰.

op.cit.; *Algebris (UK) and Anchorage Capital Group v European Commission*, T-570/17, *op.cit.*; *Hans-Wilhelm Saure v European Commission*, T-651/21, *op.cit.*

²⁶ Namely, orders in *Bertalan Tóth v European Commission*, T-17/22, *op.cit.*; *Patrick Swords v European Commission*, T-586/21, *op.cit.*; *ClientEarth AISBL v European Commission*, T-661/21, *op.cit.*; *Liviu Dragnea v European Commission*, T-738/18 RENV, *op.cit.*; *ClientEarth AISBL v European Commission*, T-792/21, *op.cit.*

²⁷ Namely, orders in *Edward William Batchelor v European Commission*, T-85/18, *op.cit.*; *Hans-Wilhelm Saure v European Commission*, T-165/22, *op.cit.*; *Andrea Homoki v European Commission*, T-517/19 INTP, *op.cit.*

²⁸ Namely, orders in *Hans-Wilhelm Saure v European Commission*, T-151/21, *op.cit.*; *Hans-Wilhelm Saure v European Commission*, T-154/21, *op.cit.*; *Smart Kid S.A. v European Commission*, T-712/21, *op.cit.*

²⁹ Judgment in *Agrofert, a.s. v European Parliament*, T-174/21, *op.cit.*

³⁰ Order in *Validity Foundation v European Commission*, T-640/20, *op.cit.*

³¹ Order in *Hans-Wilhelm Saure v European Commission*, T-232/21, *op.cit.*

³² Judgment in *Pollinis France v European Commission*, Joined Cases T-371/20 and T-554/20, *op.cit.*

³³ Judgment in *Hans-Wilhelm Saure v European Commission*, T-524/21, *op.cit.*

³⁴ Judgment in *Huhtamaki Sàrl v European Commission*, T-134/20, *op.cit.*

³⁵ Order in *Hahn Rechtsanwälte PartG mbB v European Commission*, T-87/22, *op.cit.*

³⁶ Order in *Hungary v European Commission*, T-104/22 R, *op.cit.*

³⁷ Judgment in *Hans-Wilhelm Saure v European Commission*, T-651/21, *op.cit.* Paragraph 108.

³⁸ Judgment in *Hans-Wilhelm Saure v European Commission*, T-524/21, *op.cit.* Paragraphs 45-47, 49, 60.

³⁹ Judgment in *Hans-Wilhelm Saure v European Commission*, T-651/21, *op.cit.* Paragraphs 64-65.

⁴⁰ Judgments in *Pollinis France v European Commission*, Joined Cases T-371/20 and T-554/20, *op.cit.* Paragraphs 97, 111-113, 116-117, 125-127, 131, 134-136; *Hans-Wilhelm Saure v European Commission*, T-448/21, *op.cit.* Paragraph 77; *Hans-Wilhelm Saure v European Commission*, T-651/21, *op.cit.* Paragraph 87.

Furthermore, the General Court brought further clarifications to the concept of overriding public interest⁴¹ and the general presumption of confidentiality⁴².

6.3. New Court cases introduced against the European Commission in 2022

In 2022, 11 cases involving the European Commission were brought before the European Courts, compared to 27 in 2021.

Nine of them concern actions introduced before the General Court⁴³, three of which were already closed in 2022 by the orders mentioned above⁴⁴.

In parallel, two appeals were introduced before the Court of Justice against a judgment of the General Court in cases where the European Commission was a party to the proceedings⁴⁵, one of which was already closed in 2022 by the order mentioned above⁴⁶.

⁴¹ Judgment in *Hans-Wilhelm Saure v European Commission*, T-651/21, *op.cit.* Paragraphs 42, 66, 90.

⁴² Judgments in *Huhtamaki Sàrl v European Commission*, T-134/20, *op.cit.* Paragraphs 59-60, 71-73, 75, 78; *Agrofert, a.s. v European Parliament*, T-174/21, *op.cit.* Paragraphs 92-94; *Ondřej Míka v European Commission*, T-214/21, *op.cit.* Paragraph 55; *Hans-Wilhelm Saure v European Commission*, T-651/21, *op.cit.* Paragraph 105.

⁴³ Cases *Bertalan Tóth v European Commission*, T-17/22, *op.cit.*; *Asesores Comunitarios, SL v European Commission*, T- 77/22; *Hahn Rechtsanwälte PartG mbB v European Commission*, T-87/22, *op.cit.*; *Hungary v European Commission*, T- 104/22; *Hans-Wilhelm Saure v European Commission*, T-165/22, *op.cit.*; *TotalEnergies Marketing Nederland NV v European Commission*, T-332/22; *Herbert Smith Freehills LLP v European Commission*, T-570/22; *Veneziana Energia Risorse Idriche Territorio Ambiente Servizi SpA v European Commission*, T-602/22; *Paola Primicerj v European Commission*, T-612/22.

⁴⁴ *Bertalan Tóth v European Commission*, T-17/22, *op.cit.*; *Hahn Rechtsanwälte PartG mbB v European Commission*, T-87/22, *op.cit.*; *Hans-Wilhelm Saure v European Commission*, T-165/22, *op.cit.*

⁴⁵ Cases *Pollinis France v European Commission*, C-726/22 P; *TUIfly GmbH v European Commission*, C-764/21 P, *op.cit.*

⁴⁶ Order in *TUIfly GmbH v European Commission*, C-764/21 P, *op.cit.*