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INFORMATION RIGHTS IN THE EUROPEAN UNION UNDER THE
REGULATION EC No 1049/2001 AND THEIR EXERCISE BY ITS CITIZENS

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List of abbreviations

AI	Artificial Intelligence
Art.	Article
COVAX	COVID-19 Vaccines Global Access
et al.	Et alii
EU	European Union
i.e.	Id est
IT	Information Technology
n.a.	Not available
p.	Page
para.	Paragraph
TEU	Treaty on European Union in its current consolidated version following the Treaty of Lisbon (2007)

List of definitions

Commission	The European Commission
Council	The Council of the European Union
Courts	The Court of Justice of the European Union and the General Court of the European Union
EU	The European Union
EU Residents	Any citizen of the EU, and any natural or legal person residing or having its registered office in an EU Member State
Member States	The 27 member states of the European Union
Parliament	The European Parliament
Regulation	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
Institutions	The European Parliament, the Council of the European Union and the European Commission
Reports	Annual reports of the European Parliament, the Council of the European Union and the European Commission drawn up in accordance with the Regulation 1049/2001 for the years 2020, 2021 and 2022
Relevant Period	The years 2020, 2021 and 2022

Abstract

This thesis deals with the EU's core values of transparency and openness. The research question is what information individuals and companies sought from the European institutions during the period from 2020 through 2022. The analysis focused on the subject matters that were most requested by EU citizens and their interrelationships with specific events. The outcome of the investigations was that there is a continuous high interest in information relating to fundamental rights and interests and a variable interest caused by specific crises or legislative measures. The thesis highlights shortcomings of the current EU information services and proposes solutions for improvement.

Keywords: European Union, application for access to documents, transparency and democracy, correlations, AI

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1. Introduction

The European Union (**EU**) is a supranational union embracing 27 member states (the **Member States**) dealing with political and economic issues and being governed by the Treaty on European Union (**TEU**) (Archick 2023, p. 1-3). The EU developed over the last 70 years into a complex, far reaching and strong entity that is shaping and defining almost all areas of economic and professional activity of its more than 448 million citizens. The EU's fundamental basis is the single market concept that guarantees EU citizens a free circulation of goods, capital, people and services (Pelkmans 2016, p. 1095). In order to implement the single market, the EU aims to create an equivalent economic and legal environment to the benefit of all EU citizens by unifying legal, financial and economic standards across the EU.

In order to emphasize its democratic nature and to promote its acceptance by private persons and legal entities, the EU's acting is based on the concept of transparency. Its decisions should be made as transparently and as close to the citizens as possible (Art. 1 para. 2 of the TEU). Consequently, the sharing of any information on which decisions of the EU are based, is an essential element for the successful functioning of the EU.

Art. 15 of the TEU determines that "any citizen of the Union and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents". The Council was mandated to elaborate the respective general principles and limits of these access rights. The outcome therefrom was the Regulation EC No 1049/2001 (the **Regulation**) which entered into force on December 3, 2001. The Regulation was directly applicable law in all Member States and did not require prior implementation into national law. It sets forth the rules and procedures regarding public access to documents (as defined therein) of the three main EU institutions, namely the European Commission (the **Commission**), the Council of the European Union (the

Council) and the European Parliament (the **Parliament** and jointly with the Commission and the Council the **Institutions**).

The scope of this work is to identify to what extent and in which context EU citizens and companies (jointly **EU Residents**) exercise their access rights and make use of their institutional right to get informed on the Institutions' decision making, primarily pursuant to the Regulation. Therefore, the applications for access to documents according to the Regulation in the years 2020, 2021 and 2022 (jointly the **Relevant Period**) will be analyzed to answer the research question: *"What information did individuals and companies seek from the Institutions in the period 2020-2022?"*

During the Relevant Period, the EU and the Member States faced serious political, social and economic crises, such as in particular the COVID-19 pandemic, the Russian invasion of Ukraine and the aftermath of Brexit (Nugent et al. 2023, p. 4). These crises triggered strong reactions and an intensified activity of the Institutions. The analysis herein deals further with potential correlations between external or EU internal events on the one side and the scope and content of requested information on the other side.

The thesis is divided into the following parts: A theoretical background shortly describes (i) the role of the Institutions and (ii) the Regulation (Section 2). In Section 3 the methodological approach is outlined. Key figures regarding the applications for documents for each of the Institutions are presented in Section 4. Section 5 deals with the analysis of the main content of the requested information and their correlation with external or EU internal events. These explorations are complemented by an outlook to future developments and challenges which includes potential solutions for improvement (Section 6). Finally, limitations and future research questions are discussed and a conclusion is drawn (Section 7).

2. Theoretical background

2.1 Role of the Institutions

The Commission is the main actor in the EU and is being described as one of the world's most powerful institutions (Nugent & Rhinard 2015, p. 1). It is composed by its president and 26 commissioners. Pursuant to Art. 17 para. 1 of the TEU, the Commission is responsible for promoting the EU's general interest through respective initiatives and therefore may be qualified as 'motor' of the European integration (Schütz 2021, p. 122). Only the Commission can propose by means of regulations (directly binding on EU Residents) or directives (only binding on governments) concrete rules or policies which it considers advisable or necessary to implement. The Commission also controls compliance with EU law by the Member States and assumes important budgetary, coordinating, and representatives' functions (Schütz 2021, p. 123).

The Council comprises one ministerial representative from each Member State. It has no permanent president, but a rotating presidency for a period of 18 months (Schütz 2021, p. 102). The Council has, jointly with the Parliament, the power to adopt a legislative proposal of the Commission and make it binding by using the sovereign powers conferred to it. It furthermore assumes policy-making and coordinating functions (Art. 16 para. 1 of the TEU). Additionally, the Council is involved in formulating the foreign and security policy, international agreements and the budgetary plan of the EU (Council of the EU 2018, p. 1).

The Parliament is constituted by members that are directly elected in the Member States (Art. 14 para. 2 of the TEU). It has three areas in which it is active, the legislative process, the budgetary procedure and supervisory tasks vis-à-vis the other institution (Archick 2014, p. 2 et seq). Over the years, its powers have been continuously increased by respective treaties and it has evolved into a "legislative powerhouse" (Schütz 2021, p. 91).

2.2 The Regulation 1049/2001 and access to documents procedure

The Regulation deals with the right of access to documents granted to the EU Residents. It refers in its recital (1) to the TEU and its commitment to the concept of openness and to an even closer union among European Residents.

As apparent from recitals (3) and (10), the Regulation aims to create greater transparency regarding the decision making of the Institutions by granting EU Residents access to all documents that are composed or received by the Institutions (subject however to certain exceptions and restrictions set forth in Art. 4 of the Regulation).

Documents are defined as “any content whatever its medium (i.e. written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the Institutions’ sphere of responsibility” (Art. 3 para. (a) of the Regulation). The Regulation distinguishes between two options to get access to documents:

First, the Institutions must provide public access to a register where documents should be contained in electronic form by indicating certain information, such as reference number, subject matter and content (Art. 11 and 12 of the Regulation). Second, the Institutions have to provide access to documents upon application of a duly entitled applicant (Art. 6 et seq. of the Regulation).

Pursuant to Art. 17 para. 1 of the Regulation, the Institutions are obliged to yearly publish a report for the preceding year which has to include (i) the number of applications where access to documents was refused, (ii) the reasons for the refusal and (iii) the number of sensitive documents not available in the register.

The Institutions’ reports do not follow an uniform presentation, but differ in their structure and in the scope of the disclosed information. While Art. 17 of the Regulation sets forth the minimum information to be contained in the reports, the Institutions provide in fact more

information: First, all three Institutions indicate both, the overall number of applications and the number of visits to their respective register. In addition, the reports of the Council and the Commission give more detailed information as to the subject matters of the applications. While the Council's breakdown is made to 28 policy areas, the Commission's breakdown occurs to any of the 44 directorates existing within its organization. Lastly, the Council provides also certain details regarding the content of information requests made outside the Regulation. The Parliament does not make breakdowns to specific contents, but to the type and nature of the requested documents.

3. Methodological background

In order to answer the research question, a systematic literature review was conducted. The aim of this method was to create an overview of the current functioning of the Institutions' information policy, to identify trends and developments in the EU Residents' demand for information and to touch upon potential future challenges and improvements.

The Institutions provide a lot of information on their websites which were intensively used for this work. The most valuable research sources were the annual reports for the years 2020, 2021 and 2022 that each of the Institutions established in accordance with Art. 17 of the Regulation (jointly the **Reports**). The analysis of the Reports and the evaluation of the information contained therein is the core element of the research for this work.

The Reports also inform on the use of the registers held by the Institutions pursuant to Art. 11 of the Regulation. In this respect, only general data such as the number of visits, visitors and published documents are disclosed. From these indications no conclusions on the content of the requested information can be drawn. They demonstrate however – in a more general way – the EU Residents' demand for information. To that end they are integrated herein.

Finally, legal texts, scientific articles from professional journals, reference books, court decisions and studies were used for the research. The focus on the Reports to identify the scope

and content of the requested information seems to be adequate and a necessary method for this work since the Reports are the only reliable source for such data.

The additional use of external literature is used to challenge the published information by the Institutions through different perspectives, argumentations and analyses.

4. Key figures regarding the exercise of access rights

All data and figures presented in this Section 4 were taken – unless explicitly indicated otherwise – from the Reports and refer to the Relevant Period. They serve (i) to provide an overview of the actual amounts of information requests made during the Relevant Period and (ii) to assess developments in the EU Residents' demand-related behavior. The Reports differentiate between initial and confirmatory applications. However, the key figures herein refer only to initial applications since confirmatory applications do not give additional indication on the content of the requested information which is identical for both.

4.1 European Parliament

4.1.1 Applications

The Parliament received by far the fewest access requests for public and non-public documents compared to the Commission and the Council.

However, the number of applications has increased significantly by almost 50% from 2020 through 2022, from 442 to 658 applications. During the Relevant Period, the overall applications amounted to 1,549. The rate of applications for which access to information has been granted – wholly or partially - has increased from 93% to 96%.

Unlike the Council and the Commission, the Parliament provides one additional significant information: the number of applications for documents which – upon a specific request – were identified as being available, but not yet published in the relevant register. During the Relevant Period, the share of these cases has risen from 20% to almost 34% (European Parliament 2022,

p. 8). This indicates that one third of the applications referred to documents that were in fact available for public access but have been failed (for whatever reason) to be qualified as such.

4.1.2 Users of Register

With regard to the register provided by the Parliament in accordance with Art. 11 of the Regulation, the number of users has more than halved in the Relevant Period and amounted to around 25,000 in 2022 (European Parliament 2021, p. 5-8, European Parliament 2022, p. 5-8, European Parliament 2023, p. 5-9).

4.2 Council of the European Union

4.2.1 Applications

During the Relevant Period, the Council has received an overall number of applications of 7,166 which is more than four times as many as the Parliament.

While the number of applications pursuant to the Regulation has decreased by approximately 10% from 2020 to 2021, it increased significantly in 2022 by 32% to 2,762 applications.

The rate of applications which were decided – wholly or partially – in favor of the applicants was between 83% and 88% (Council of the EU 2023, p. 24-25).

4.2.2 Users of Register

As in the case of the Parliament, the number of users of the registers has declined from 340,000 in 2020 to 228,000 in 2022, a drop of around 33% (Council of the EU 2021, p. 7, Council of the EU 2022, p. 5, Council of the EU 2023, p. 6).

4.3 European Commission

4.3.1 Applications

Compared to the other Institutions, the Commission has received by far the most applications for access to documents. The number of requests developed differently during the Relevant

Period: In 2021, it increased by 5% compared to the previous year, but in 2022 it fell by around 10% to 7,400 requests. The overall amount of all applications during the Relevant Period was 23,831 (European Commission 2023, p. 1).

The rate of requests that were – wholly or partially - granted ranged between 74% and 81% (European Commission 2023, p. 6).

4.3.2 Users of Register

The number of users of the Commission's register increased by about 3% to 15,222 between 2020 and 2021 but decreased by about 8% from 2021 to 2022 to 13,966 users (European Commission 2022, p. 1, European Commission 2023, p. 1). These figures have to be assessed against the background that in 2019 the register had just 6,600 users, meaning that there had been a significant increase prior to the Relevant Period (European Commission 2021, p. 1).

4.4 Applicants

The Reports contain information on the professional profile of the applicants. Also in this regard, changes have occurred during the Relevant Period. In particular, the portion of academics, lawyers and journalists has overall significantly increased. However, due to the limited scope of this work, the developments of the applicants' professional profile could not be analyzed herein.

5. Analyses of developments and correlations

While Section 4 above presented key figures regarding the applications for access to documents, this Section 5 deals with the content and subject matters of the applications. The analysis focuses on two major questions: which were the topics in which EU Residents were most interested in and was there any correlation between the demand for information and any external or EU internal events.

5.1 Analysis of significant developments regarding the European Parliament

As mentioned above, the Parliament's Reports do not allocate the applications to specific subject matters but indicate percentages with respect to the nature of the requested documents, which allows the analysis only to a lesser extent.

The Parliament's Reports show evidence however that there was a constant increase of applications for access to documents and hence an increased interest in the Parliament's work. This is in line with the Parliament's increasing competences as outlined above. In terms of nature, legislative documents were the most requested type in 2021 and 2022 (European Parliament 2022 p. 6, European Parliament 2023, p. 6). Correlating, in 2021, there was an increase of almost 100% in the number of legislative acts adopted by the Parliament together with the Council (EUR-Lex n.a., n.a.). The rise in the number of applications can be assumed to be caused by the Parliament's increasing activity.

5.2 Analysis of significant developments regarding the Council of the EU

Unlike the Parliament, the Council provides information on the political and economic subject areas to which requested documents can be assigned.

The Council's Reports provide for three schemes regarding the policy areas of requested documents: (i) one scheme highlighting the policy areas which were most requested in percentages, (ii) one scheme listing all of the 28 policy areas as defined by the Council with the respective percentage of document requests allocated thereto and (iii) one scheme relating to information requests made outside the Regulation and highlighting in percentages the policy areas which were requested most.

The analysis of the three schemes will be carried out as follows: First, it will be outlined whether and to what extent the five top policy areas of requested documents have changed in the Relevant Period. Second, it will be identified which policy areas have experienced the most important increase or decrease of interest. Based on the identified shifts in demand it will be

examined whether such changes correlate with any external or EU internal event. Third, the developments regarding the requests made outside the Regulation are described and evaluated.

5.2.1 Development of the Top Policy Areas

(i) The top policy area was constantly “Justice and Home Affairs” with percentages of 20.4 (2020), 17.8 (2021) and 18.5 (2022). This policy area comprises fundamental topics such as immigration policy, border management, fundamental rights of EU citizens and internal security.

(ii) The topic “Common Foreign and Security Policy” also had a constant high priority ranking third in 2020 (13.1%) and 2021 (12.1%) and second in 2022 (13.7%).

(iii) Equally, the topic “Economic and Monetary Policy” was constantly under the top three with second-rankings in 2020 (16.7%) and 2021 (14.8%) and third-ranking in 2022 (10.3%).

(iv) Fourth and fifth placed topics, however, changed during the Relevant Period: new interest areas came up, such as General Policy questions (2020), Environment (2020 and 2021), Agriculture and Fishery (2021) as well as Competitiveness and Telecommunications (in 2022) (Council of the EU 2023, p. 29). The top policy areas are shown in Appendix 1.

These rankings lead to the conclusion that there are basic topics which relate to the core concept of the EU, the single market and the fundamental rights of the EU Residents. These remain constantly current issues of utmost importance. Their impact on the EU Residents remains in fact unchanged at a high level and triggers the highest number of requests for documents. Other topics were not as stable but became of particular interest in a specific year or even popped up suddenly and temporarily in the five top policy areas. During the Relevant Period, this was the case for topics such as competitiveness and telecommunications. The interesting question is whether there were specific reasons for the respective coming to the fore. In this context, it is important to proceed with the analysis of the second scheme looking at all 28 policy areas as defined by the Council.

5.2.2 Major changes in policy areas and their correlations

This part of the analysis focuses on those policy areas for which significant changes in the number of applications occurred and on their potential correlation with external or EU internal events.

To focus on the most significant developments, a threshold has been applied which refers to the fact that only those policy areas will be subject to analysis for which the number of applications has increased by at least 2.5% in one or more years during the Relevant Period. By applying this threshold, the following policy areas were identified which are also shown in Appendix 2:

(i) **Agriculture and fisheries.** In 2020, just over 4% of applications related to this area. In 2021, there was a significant increase in demand to almost 8% which fell back again to the 2020 level in 2022 (Council of the EU 2023, p. 29). This short-term boost correlates with the adoption of three regulations governing the EU's common agricultural policy for the years 2023 through 2027 which were finalized by the end of 2021. These regulations contain in particular import control- and financing instruments regarding the agricultural sector within the EU, including the policy for subsidies (Bourget 2021, p. 3). In 2020 and 2021, the COVID-19 pandemic had an additional negative impact on the sector and further deepened its problems. The EU constantly and actively aims to diminish these effects and to protect the agriculture sector. It can be assumed that the EU's aforementioned measures of support triggered the increased interest of the respective EU Residents and therefore the rising number of applications. This assumption is confirmed by the fact that applications also peaked in 2018 when the Council first published the proposals for the aforementioned regulations (Binchy 2022, p. 2). The publication triggered an increased number of applications for access in 2018 as compared to 2017 and 2019 (Council of the EU 2019, p. 29).

(ii) **Competitiveness.** With regard to this policy area, the percentage of applications more than tripled in 2022 to almost 10% (Council of the EU 2023, p. 29). One of the overarching main

reasons for this was certainly the Russian invasion of Ukraine that began in February 2022 and continues to this day, including the multiple significant consequences thereof. The invasion evidenced the dependency of the EU, its market and the Member States on third countries, in particular with respect to the energy sector (Böhme et al. 2022, p.55 et seq.). The sanctions applied on Russia regarding the import of gas and oil triggered an energy crisis in almost all Member States, albeit to different degrees. Heavy price increases in almost all areas followed, as well as hyperinflation and supply shortages (International Monetary Fund 2022, p. 4-7). All these facts have weakened the Member States' economy and reduced the competitiveness of industries and businesses across the EU. Therefore, it was of utmost interest for EU Residents to get information on any initiative and strategy that the Council considered being suitable to strengthen competitiveness of the EU economy.

(iii) **Energy.** In 2022, applications for access to documents have increased by almost 3%. Certainly, for the same reason than those described under (ii) above. In particular the import restrictions imposed for Russian gas resulted not only in a shortage of energy, but also in significant price increases that negatively impacted almost all industrial and agriculture sectors by driving up production costs across the EU.

(iv) **Economic and monetary policy.** The share of demand in this area peaked at over 16% in 2020. However, the demand decreased consistently in 2021 and 2022, falling back again to the 2019 level (Council of the EU 2023, p. 29). The peak in 2020 coincides with an economic and monetary initiative by the EU who adopted the Pandemic Emergency Purchase Program which was intended to buy up bonds from public and private debtors to lower market yields. The purpose of this program was to make it easier for EU Residents affected by COVID-19 pandemic to access external funding and repay debt (Runkel 2022, p. 1575) and was intended to help them to overcome the economic crisis. The amount provided by the EU for this program was increased twice in 2020 which created additional interest in the subject matter (Schweigl

2022, p. 74). In addition, six further key measures were adopted in 2020 to create positive incentives for financing to guide the economy through the crisis (European Central Bank 2020, n.a.). In 2021, when the COVID-19 pandemic continued to have a major impact on the economy, applications in this area remained quite high at over 14%. Only in 2022 when the effects of the pandemic declined, a significant drop to 10% occurred (Council of the EU 2023, p. 29).

(v) **Telecommunications.** The demand in that area more than doubled from 3% to almost 7% in 2022 (Council of the EU 2023, p. 29). The sub-sectors that fall under the umbrella term ‘telecommunications’ include in particular digital future, cyber security and digital services and markets (Council of the EU n.a., n.a.). In 2022, several laws were passed such as the Digital Service Act which were in particular intended to better protect EU Residents' fundamental rights in relation to online activities and to create a framework for the digital market. In addition, a legal framework was adopted that sets out digital targets to be achieved by 2030 (European Commission 2023a, n.a.). In a digitizing world, these newly enacted laws can be presumed to have caused the increased interest in this matter.

5.2.3 Development of policy areas regarding applications outside the Regulation

During the Relevant Period, the General Secretariat of the Council received a constantly increasing number of requests for information outside the Regulation which were submitted via various channels such as email and letters: 5,337 in 2020, in 2021 7,038 and 7,455 in 2022 (Council of the EU 2023, p. 21). These have been attributed by the Council to the 28 defined policy areas, when applicable, but comprise also a variety of other subjects (Council of the EU 2022, p. 22). The analysis of the subject matters of these requests shows the following: Out of the policy areas that have a priority for the requests under the Regulation, only Justice and Home Affairs ranked constantly under the first seven. Otherwise, the requests related more to other, more personal subjects or messages on specific current crises, such as in particular

“personal problems” with 14%, 18% and 17% over the Relevant Period, and “COVID-related” with 13% in 2021 and 6.6% in 2022. In 2021, COVID-related requests were predominant dealing with national lockdowns, vaccination campaigns or travel restrictions (Council Report 2021, p. 22). Following the Russian invasion of Ukraine and the subsequent restrictive measures against Russia, EU Residents have often asked for guidance from the General Secretariat of the Council (Council of the EU 2022, p. 22).

5.3 Analysis of significant developments regarding the Commission of the EU

The Commission’s Reports inform on the content of the applications by allocating the enquiries to the various directorates of its organization.

First the rankings of the directorates will be described and second those areas will be identified where important changes in the number of applications occurred.

5.3.1 Development of the top directorates

There are three directorates which ranked constantly under the top five: The Secretariat-General ranked first in 2020 (10.2%) and 2022 (11.7%) and second in 2021. The directorate Health and Food Safety ranked second in 2020 (7.7%) and fourth in 2021 (7.8%) and 2022 (7%). The directorate Internal Market, Industry, Entrepreneurship and SMEs ranked fourth in 2020 (7.1%), third in 2021 (8.4%) and second in 2022 (8.7%).

The directorate International Partnership ranked first in 2021 (11%) and third in 2022 (8.3%). Other directorates popped up under the top five for one year only, such as Competition in 2020 (6.2%) and environment in 2021 (6.1%) (European Commission 2022, p. 4, European Commission 2023, p. 4). Appendix 3 grants an overview of the most requested directorates during the Relevant Period.

The rankings evidence, as it was the case for the Council, that there are subject matters which remain constantly important to the EU Residents. As an example, the Commission’s Report

2020 explicitly highlights that there is a consistently high interest in health-related matters, which prevailed even before the COVID-19 pandemic (European Commission 2020, p. 12). Also as regards the Commission, the interesting question is about the directorates that experienced an important change in their demand. Therefore, it is important to analyse those directorates that became suddenly and temporarily of higher relevance.

5.3.2 Major changes in the directorates' relevance

In order to focus only on the most significant changes, a threshold of 1.5% has been applied. The threshold is 1% lower than the one applied for the Council. This takes into account that the Commission allocates the content of requests to its 44 directorates while the Council provides only for 28 policy areas for the allocation. This difference requires a reduced threshold to filter out significant developments. These developments are shown in Appendix 4.

(i) The Secretariat-General received the most enquiries in 2020 and 2022, while there was a slight decrease in 2021 (European Commission 2022, p. 4, European Commission 2023, p. 4). It should be noted that the Secretariat-General is responsible for the development of strategies and serves as an interface between the Commission and other EU institutions (European Commission n.a., n.a.). As already mentioned, the years 2020 and 2022 were particularly eventful with the start of the COVID-19 pandemic and the Russian invasion of Ukraine respectively. With regard to both crises, the EU had to react quickly, adapt appropriate legal acts as well as new priorities and strategies to protect the EU, its economy and the EU Residents. An increased interest in these actions followed as a consequence therefrom.

(ii) Competition Directorate. The Directorate is responsible for drafting legal acts in the areas of antitrust law, merger control and state subsidies (Baltzopoulos et al. 2021, p. 567). During the Relevant Period, requests peaked in percentages in 2020 and decreased in each of the following two years. In 2020 and 2021, the Board of Directors took more than 1,500 decisions regarding state aid (Baltzopoulos et al. 2021, p. 581). Furthermore, a framework for state aid

was approved in 2020 which aimed to facilitate the granting of state aid (European Commission n.a. a, n.a.). The strategic plan which defines the Directorate's strategy for the upcoming five years was also adopted in 2020 (European Commission 2020, n.a.). Most of these activities were designed to mitigate the severe economic consequences of the COVID-19 pandemic and were of utmost interest for EU Residents.

(iii) With respect to the Environment Directorate, there was a significant increase of over 2.7% in 2021 compared to the prior year, but a decrease of approximately 1.4% in 2022 (European Commission 2022, p. 4, European Commission 2023, p. 4). The reason for the swing in 2021 coincides with the adoption of certain measures as part of the EU Green Deal. It is one of the EU's six priorities and is intended to guide the EU towards climate neutrality by 2050 (Oberthür & Homeyer 2023, p. 452). Given the tremendous importance of climate-related issues and their heavy impact on the EU Residents, including in particular in terms of alternations in production, costs and energy, a correlation between the increased demand in 2021 and the EU's "green" measures is to be assumed.

(iv) The Directorate for Migration and Home Affairs has recorded an increased demand in both, 2020 and 2022. The increased demand in 2020 coincidences with the proposal of a new Pact on Migration and Asylum proposed by the Commission in 2020 which aims to provide a framework for migration management (Lücke 2020, n.a.). Furthermore, the Commission published in 2020 its strategic five-year plan (European Commission 2020a, n.a.).

As regards 2022, there is an obvious reason for the increase as around 4 million refugees arrived in Europe as a result of the Russian invasion of Ukraine (Clingendael 2022, p. 1).

(v) The number of requests relating to the International Partnerships Directorate increased in 2021 by over 3.5%, representing 11% of all requests and abruptly dropped to around 2.7% in 2022 (European Commission 2022, p. 4, European Commission 2023, p. 4). The 2021 peak coincides with a particularly high level of activity of the Directorate and the importance of its

actions. These include support for the Covax facility which was responsible for ensuring access to vaccines worldwide and the development of a new strategy called “Global Gateway”, which is intended to promote investment in infrastructure of all kinds in partner countries to address climate change and digital transformation (European Commission 2022, p. 6, Die Bundesregierung 2023, n.a). On the one hand, the COVID-19 pandemic was to be tackled and, on the other hand, global investment needs were to be covered by the Global Gateway strategy. As these measures concern either immediate problems or long-term strategies, they can be supposed to have a strong correlation with the rising interest of applications.

6. Outlook on future steps

6.1 Ongoing importance of access rights

It can be assumed that the EU will face in the future (at least) three major challenges, namely (i) climate change and environment, (ii) energy and (iii) migration (Gaub 2019, p. 8 et seq). These topics are already identified as major issues and are therefore obvious. Other challenges will occur in addition. The current Middle East crises provides evidence for such potential risks and dangers. These crises will require reactions of the EU, mainly in terms of new regulations, decisions and political orientation. All of them will have an impact on the EU Residents and their personal, economic and financial circumstances. Therefore, the need for information will rather increase and the Institutions will be requested even more often to share the information based on which they take their decisions. Accordingly, the Regulation will continue to be a key instrument for numerous potential applicants.

6.2 Enlargement of access rights by European courts

In this context, it is important to note that the scope of the Regulation has over the last years been subject to intense interpretation and adaption by the courts of the EU, i.e. the Court of Justice of the European Union and the General Court of the European Union (jointly the

Courts). It became increasingly obvious that the Regulation – referring exclusively to the access to documents - does not appropriately meet current requirements and disregards the progress which was made in digital processing. Scientists emphasize that the Regulation has urgently to be replaced. More specifically, it turned out that the notion of public access to “documents” is somehow outdated and represents a formal boundary which negatively affects the applicants (Rossi 2023, p. 530 et seq.).

The Courts have – in several landmark decisions – constantly and stepwise adapted the interpretation of the notion “document” by taking into account new technical and digital tools as well as the applicants’ legitimate interests (Rossi 2023, p. 536). The outcome of the Courts’ case law can be summarized as follows:

(i) Digital databases do qualify as document and data which can be extracted therefrom by way of a normal or routine search may be subject of an application for access (European General Court 2011, para. 160).

(ii) Applicants are not only entitled to ask for documents (in paper-form or in digital form), but for information contained in (various) databases if such information can be extracted by way of pre-programmed search tools (Court of Justice of the European Union 2017, para. 36). Further: “Even if that information has not previously been displayed in that form or even been subject matter of a search by staff of the institutions, must be regarded as a existing document.” (Court of Justice of the European Union 2017, para. 37). This means that (subject to technical limitations) “in the digital era the words ‘information’ and ‘document’ may be used interchangeably” (Rossi 2023, p. 536).

(iii) Applicants do not only have the right to get access to information that is extractable, but also to information that is first to be rearranged. The Institutions are under the obligation to create new documents by using IT programs easily available on the market and using standard procedures of conversion and rearrangement (European General Court 2022, para. 46, 47).

Therefore, any outlook has to take into account the Courts' rulings and the fact that the Institutions will have to provide information to a much larger extent and to take action in terms of uplevelling their IT capabilities in order to be able to extract, converse and/or rearrange information that are contained in their databases and thereby to share a maximum of information with the EU Residents.

6.3 Existing shortcomings

The additional requirements that the Courts have imposed on the Institutions as regards the processing of data will trigger a significantly increased workload. An issue that has already been brought forward by the Institutions (European General Court 2022, para. 110). Also, the Institutions often have difficulties to meet the deadline of 15 working days for processing an application. In 2022, the Council had to extend the deadline for 29.8% of the applications (Council of the EU 2022, p.13).

By obliging the Institutions to bring themselves up to a state-of-the-art technology, the Courts indirectly address another major issue: time. Applicants that request for certain information would normally need it in due course. In fast moving times, the value of information may rapidly decrease over time and lose its relevance or usefulness. Therefore, the compliance with the actual deadlines is of utmost importance.

As disclosed in the Parliament's Report 2022, more than one third of the applications related to documents that were already available at the Parliament, but (unintentionally) not identified and therefore not added to the register of public documents (European Parliament 2022, p. 7). The same detrimental situation will probably exist within the Commission and the Council. In view of the tremendous activities, initiatives and administrative tasks of the Institutions, it is almost a logical consequence that there is an overload of documents and information that is barely manageable.

As described above, the Reports indicate only very general data as regards the use of the Institutions' registers in the meaning of Art. 11 of the Regulation. While the Council and the Commission allocate the applications to specific policy areas and directorates, respectively it remains unknown which topics are most researched in the Institutions' registers. Accordingly, an important part of information requests is inaccessible to an evaluation.

6.4 On the way to the use of AI in access-related policies

In order to overcome the shortcomings described above, the Institutions did already launch various IT initiatives that should bring efficiency gains and make the access to documents process automatised, clearer and transparent (European Commission 2022, p. 3). The potential of artificial intelligence (AI) has, to date, however not been explored in relation to public access to documents. In this context, it should be considered additionally whether the use of AI may make an important difference to the benefit of both, EU Residents and the Institutions. AI could be advantageous to obtain and publish a greater variety of data. This could include publishing data relating to the public register, such as the number and thematic categorisation of documents actually accessed. Another technically more complex application example of AI is the filtering of information out of any document in both, public and internal EU documents (Ribeiro et al. 2018, p. 53). The advantage of AI is that it learns and improves over the application period (Garcia et al. 2018, p. 10). In an initial phase, it will be necessary for the Institutions' employees to check the results generated by AI, make any necessary changes and re-enter them into the system after such review. Over the time, checks will however become less time consuming because AI performance will improve and get more reliable. In the future, AI will be able to improve efficiency and reduce costs immensely due to its atomisation (Zhang & Lu 2021, p. 1). At the end, AI will be able to make its own decisions based on the empirical values of any decisions previously made with the help of the Institutions' employees.

Therefore, AI could be useful for both, the management and conditioning of information within the Institutions and the process of providing information to the applicants. Regarding the first aspect, AI may in particular be used to filter out, extract and rearrange information from various documents and databases and to identify and consolidate information and data that are available across the Institutions. These proceedings would perfectly comply with the Courts' requirements as regards the processing of requested data. Relating to the second aspect, AI may be used for assessing whether any requested information can be published or is submitted to any restrictions pursuant to Art. 4 of the Regulation. Finally, AI may also prove a valuable tool to identify which documents of the Institutions' registers received the most visits and visitors.

7. Discussion

7.1 Results

7.1.1 Key figures and areas of interest

The analysis of the key figures published by the Institutions while focusing on the question what documents and information EU Residents requested most has shown the following results: First, the number of applications for access has a clear tendency to grow, even though such growth occurs not always constantly, but with peaks and lows. With respect to the Commission who received the most requests over the last years, the tendency of growth is evidenced when also looking at the periods immediately prior the Relevant Period. At the same time, visits and visitors to the Institutions' registers decreased constantly. It can be concluded from these developments that the EU Residents' requests for information are becoming increasingly sophisticated and often go beyond the content contained in public documents. These conclusions are in line with the Courts' rulings analyzed above. All of the landmark decisions dealt with some sort of extracted or rearranged information contained in various databases.

Second, as regards the content of the requested information, there are two main categories: first, EU Residents have a constant high interest in certain elementary topics that relate to their fundamental rights and economic wellbeing. Second, there are topics that either pop up temporarily in the main areas of interest or show a significant change in the number of requests. The analysis of the topics in the second category has revealed that there is a clear and strong correlation between increased requests for information and specific external or EU internal events. Such correlation also extends to the subsequent decline of interest once the relevant event lost its importance. During the Relevant Period, the COVID-19 pandemic and the Russian invasion of Ukraine were the most important external events with a huge impact on the content of requested information. As regards the EU internal events, the analysis evidenced that the Institutions' acting in terms of new regulations, strategies, policies and governmental rules heavily influenced the content of requested information. This is true for both, those acts that are related to the respective crises and are taken in reaction thereof and for those that are taken to further build the single market concept and an integrated EU and more generally, to strengthen and protect the EU, its economy and its values.

7.1.2 Outlook and improvement

Based on the assumption that there will be an ongoing strong interest in information about the Institutions' decision making and on the fact that the Courts have considerably enlarged the Institutions' obligations to provide access to information, it was identified that the integration of AI into the processing of applications has two main advantages. First, AI makes it possible to reduce the workload within the Institutions and thereby helps to save time and money. Second, AI will constantly improve over the time of its application. It may in the future not only extract, reorganize and convert information, but also check whether any request for information may be refused in accordance with the Regulation. At the end, AI helps to create a better

reliability. Further the use of AI also means that decisions on whether information can be published can be made more uniformly by ensuring identical standards for all applications.

7.2 Limitations & Future research

The first limitation arises from the fact that the Relevant Period was heavily impacted by two specific crises, the COVID-19 pandemic and the Russian invasion of Ukraine and may therefore not being representative for future periods.

Another limitation occurs from the available literature on the information policy of the EU and in particular on the thematic breakdown to subject matters.

As mentioned, the analysis refers exclusively to the data and facts relating to applications for access pursuant to the Regulation. With respect to the Institutions' register, no indications on called-up contents are provided by the Reports. Accordingly, an analysis of these parts of information gathering is not possible.

The future will hold numerous research questions in this area. It will be interesting to analyze how improved IT systems will facilitate access to a broader information basis, in particular with the help of AI. Also, the extension of AI support to other areas of document and information management deserves to be analyzed. More generally, the correlation between global crises and the need for information and guidance of the EU Residents should remain a constant field of research in order to ensure that the Institutions and the EU Residents are not divided or estranged by lacks of information and understanding. Finally, another interesting future research question may relate to the professional profile of applicants and information seekers. It has been mentioned above that the stake of academics, lawyers and journalists significantly increased during the Relevant Period. This tendency must be observed further. Certainly, these groups will spread the information among their academic circles, clients and readers, respectively. But it remains an important field of research which measures and actions may be

suitable to have the information access rights exercised by a broader range of the EU Residents in order to keep interest in the EU as high as possible.

8. Conclusion

The research and analyses in this work have shown reliable evidence that EU Residents have an increasingly strong interest in receiving information about the EU, the Institutions and their decision making. Scope and content of the interest in documents and information is largely influenced by external crises and an increased EU regulation activity. Both factors will continue to shape the EU in the future. Therefore, the Institutions' information service will get ever more important.

Transparency, being a core value of the EU, must be constantly improved and must consider that matters and contexts will become even more complex in an increasingly digitized world. Efficiency, reliability and timing in providing meaningful and conclusive information will be of the essence. The Institutions should therefore not only be vested with a state-of-the-art IT technology but should in addition work out how AI can be used to improve the process of passing on information to the advantage of both, the EU Residents and the Institutions.

The Commission states in its Report 2022 (p. 2) that "Transparency, integrity and accountability are the essential prerequisites of a democracy based on the rule of law." In a political environment where fake news, antidemocratic currents, and EU criticism represent an increasing threat, it will be of utmost importance to ever strengthen the democratic values of the EU. Also, casting a visibly new approach, with the use of AI in this area of public policy, is a requirement that the EU cannot ignore. The survival of democratic participation within the EU depends on the success of such a project.

The sharing and the constant exchange of information between the Institutions and the EU Residents is a tremendously significant tool and must be given top priority in the future.

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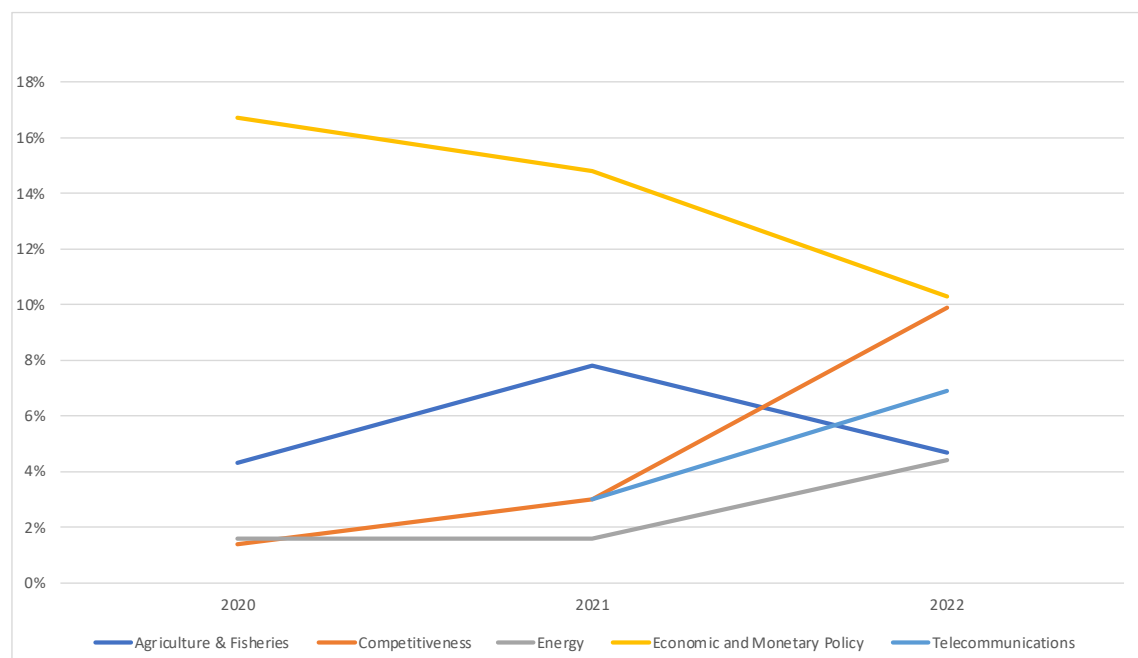
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10. Appendices

Appendix 1: Council of the EU – Top requested policy areas (in %)

	2020	2021	2022
Justice and Home Affairs	20.40%	17.80%	18.50%
Economic and Monetary Policy	16.70%	14.80%	10.30%
Common Foreign and Security Policy	13.10%	12.10%	13.70%
Competitiveness	1.40%	3.00%	9.90%
Agriculture and Fishery	4.30%	7.80%	4.70%
General Policy questions	6.70%	4.30%	3.10%
Telecommunications	-	3.00%	6.90%
Environment	6.20%	4.90%	5.90%

Appendix 2: Council of the EU - Significant developments in political areas (in %)



Appendix 3: European Commission – Top requested directorates (in %)

	2020	2021	2022
Secretariat General	10.22%	9.89%	11.66%
Health and Food Safety	7.69%	7.80%	6.98%
Internal Market, Industry, Entrepreneurship and SMEs	7.14%	8.35%	8.74%
International Partnerships	-	10.95%	8.27%
Competition	6.17%	4.63%	3.71%
Environment	3.31%	6.05%	4.66%

Appendix 4: European Commission - Significant developments in directorates requested regarding access to documents (in %)

