



Results of the European Ombudsman's ad hoc survey of stakeholders' experiences requesting access EU documents

Introduction

In September 2021, the European Ombudsman invited 89 stakeholders¹ to participate in an ad hoc survey concerning their experiences with how the EU institutions apply the EU's rules on public access to documents. There were 30 responses to the survey, which are summarised in this report.

One common theme in almost all responses was **dissatisfaction with delays** by the EU institutions in dealing with their requests for public access to documents. Delays were longer during the COVID-19 pandemic. In some cases, it took the institutions up to a year to provide a reply/access, by that time, often the documents were no longer of any interest to the applicants. The respondents also noted that there is no recourse mechanism for failure to respond within the set deadlines.

Some respondents were **dissatisfied with the arguments presented for refusing access**, finding them vague and general. Some also noted that sometimes the institutions do not take into account more recent case-law, or interpret case-law in a way that is disadvantageous from the viewpoint of the public's right to access.

Respondents also expressed **dissatisfaction with some institutions' registers of documents**, which they are obliged to keep. Often, registers do not contain many key documents or are not up to date, making it difficult for the public to know what documents exist. Some respondents argued that more documents should be made available proactively, removing the need for individuals to request access.

Many respondents said that, while their initial requests may be rejected, they often then get access after requesting a review (through the confirmatory decision). This raises questions about how initial requests are dealt with. The respondents also noted different experiences with different EU institutions, bodies, offices or agencies.

Some respondents were also **dissatisfied with the document management systems** (registration, storage) and were surprised that requested documents did not exist.

¹ The survey was sent to 89 journalists, academics, EU lawyers, interest representatives, and former complainants. They were asked to also pass on the survey to people they felt would be interested.

Context

The Ombudsman wanted to gather input from some key stakeholders familiar with the procedures on accessing EU documents with a view to feeding into the discussions in a conference on public access to EU documents, organised on 15 November 2021. A survey was prepared and shared with a group of academics, journalists, representative of civil society organisations and other stakeholders with experience of the process for requesting access to EU documents. The survey was carried out between 2 September and 8 October 2021, and responses were anonymous.

The results below reflect the views of the respondents. To put the results in perspective, for some questions, a comparison was made with relevant statistics from the reports of the European Commission², the Parliament³ and the Council⁴ on the application of Regulation 1049/2001⁵ in 2020. These three EU institutions receive the highest number of access requests in an average year.

Some relevant statistics from the institutions' 2020 annual reports include:

The **European Parliament** received 442 initial applications for public access and, in 93% of cases, access was granted. There were eight confirmatory applications, in all of which access was refused. The Ombudsman opened two inquiries into complaints concerning refused access, while no refused request was challenged in Court.

The **Council** received 2 321 initial requests for access to documents and 26 confirmatory applications. In 84% of cases, access was granted at the initial stage. The Ombudsman opened two inquiries following complaints that the Council refused access, while one decision was challenged in Court.

The **European Commission** received 8 001 initial request for documents. It granted full or partial access for 81% of those requests at the initial stage. In 309 cases, applicants made confirmatory applications, in about half of which the Commission confirmed its initial assessment. The Ombudsman opened 28 inquiries following complaints that the Commission refused access, while 12 decisions were challenged in Court.

² Report from the Commission on the application in 2020 of Regulation (EC) No 1049/2001, available at: https://ec.europa.eu/info/sites/default/files/com2021_459_en.pdf

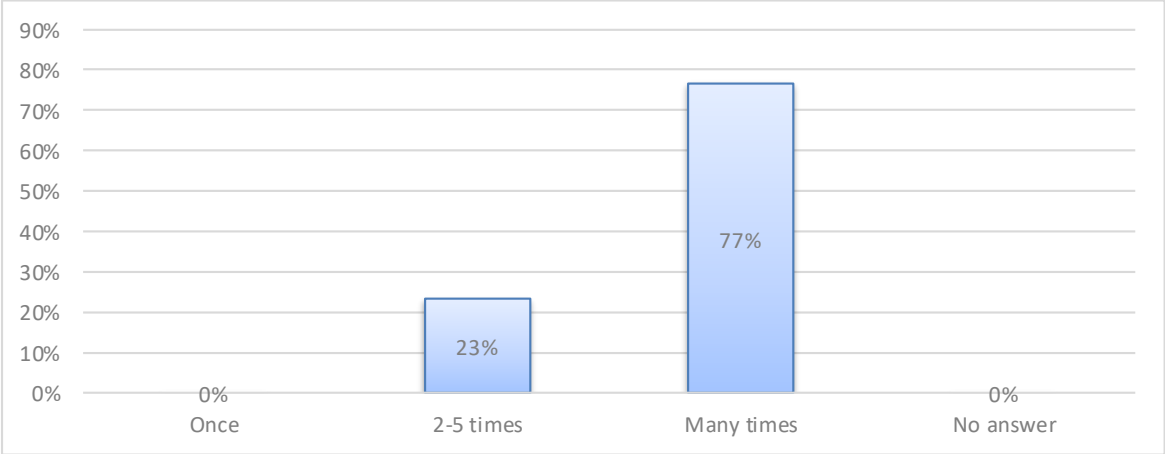
³ European Parliament's Annual Report on Public Access to Documents - 2020, available at <https://www.europarl.europa.eu/RegData/PDF/rapport2020/EN.pdf>

⁴ Report of the Council on the implementation of Regulation (EC) No 1049/2001, available at: <https://data.consilium.europa.eu/doc/document/ST-7090-2021-INIT/en/pdf>

⁵ 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, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001R1049>

Survey results

Q.1 How often have you requested documents held by the EU institutions, bodies, offices or agencies?



Q.2 From which institutions, bodies, offices or agencies have you requested access?

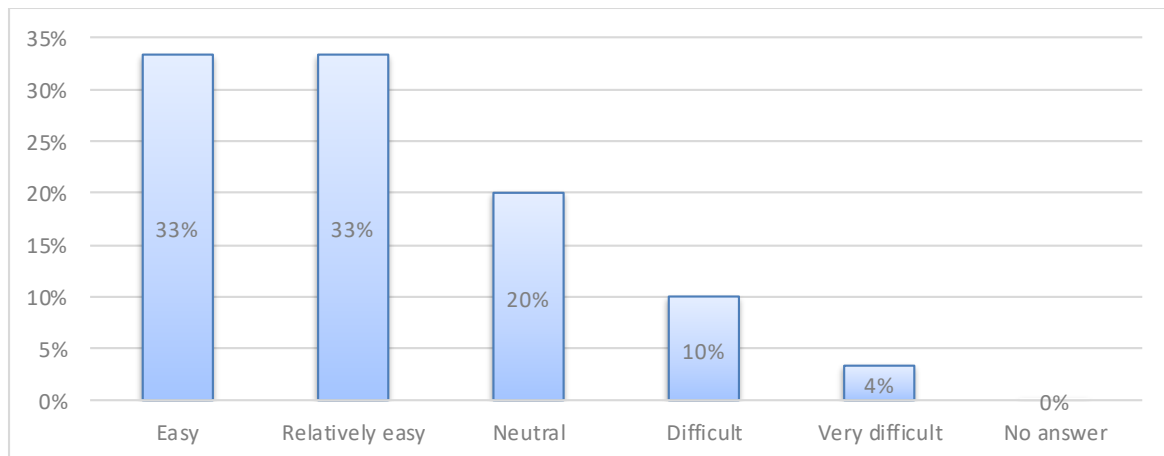
EU institution, body, office or agency concerned	%
European Commission	87%
Council of the EU	63%
European Parliament	53%
European Border and Coast Guard Agency (Frontex)	23%
European Food Safety Authority (EFSA)	17%
European Chemicals Agency	13%
European Investment Bank (EIB)	13%
Court of Justice of the EU	10%
European Central Bank (ECB)	10%
European Banking Authority	7%
European Economic and Social Committee (EESC)	3%
Other	27%

Unsurprisingly, respondents were more likely to have requested access to documents from the three main institutions: Commission, Parliament and Council.

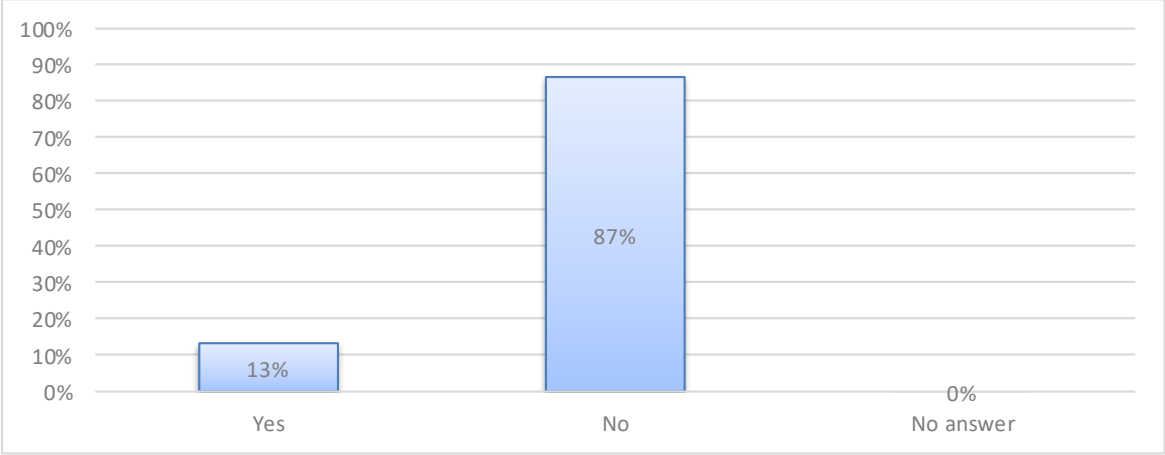
According to the reports of these institutions, in 2020:

- the Parliament received 442 initial requests for access to documents and 8 confirmatory applications (requests for review); 93 out of the 442 initial requests involved documents not previously disclosed to the public
- the Council received 2 321 initial requests for access to documents and 26 confirmatory applications;
- the Commission received 8 001 initial requests and 309 confirmatory applications.

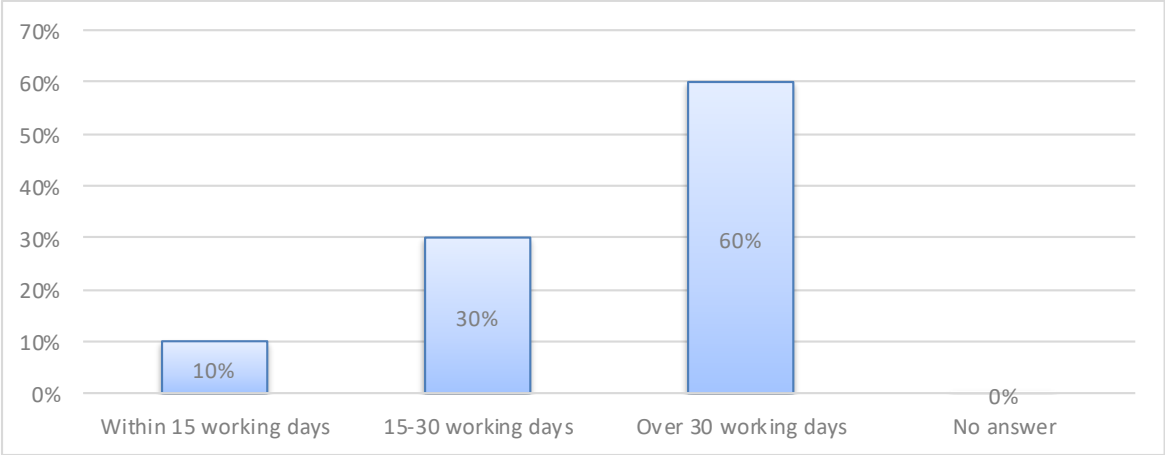
Q.3 How easy was it to make the initial access request?



Q.4 Did the institution respect the time limits for replying to your request(s)?



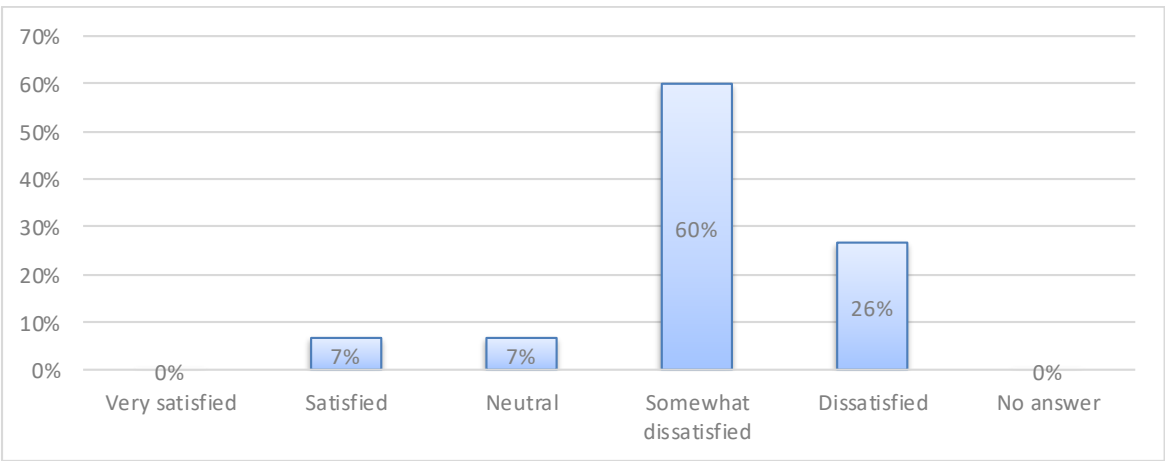
Q.5 How long did it take to get the initial substantive response?



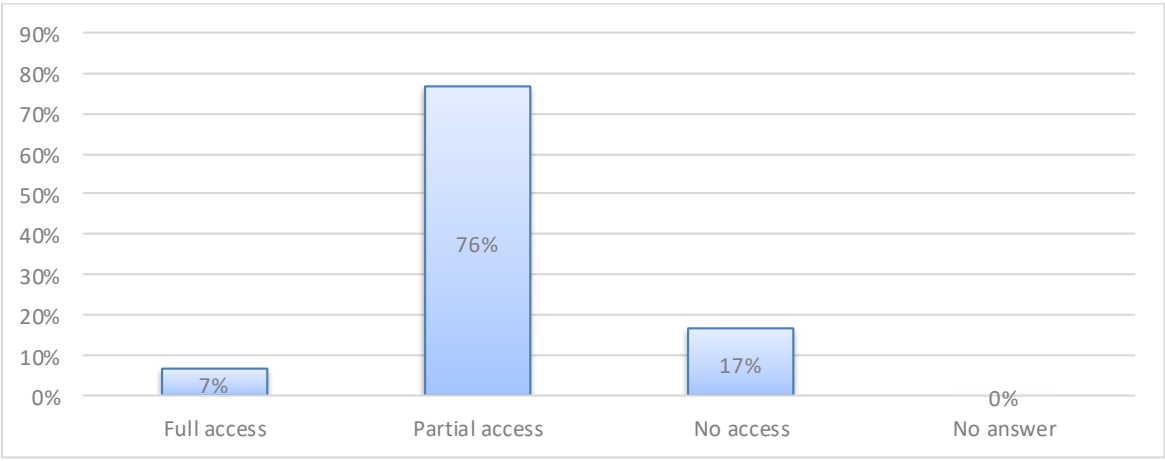
According to Regulation 1049/2001, institutions should reply to access to documents requests within 15 working days. For complicated or large requests, this may be extended by 15 days. Respondents indicated that this extended deadline was exceeded in a majority of cases.

According to the Council's report, the average time taken to process initial requests was 17 working days in 2020, the same as in 2019, and the average to process confirmatory applications was 34 working days, down from 37 in 2019. The European Parliament and the Commission's reports do not include specific information about the time to process initial or confirmatory applications.

Q.6 Rate your satisfaction with the initial substantive response?



Q.7 Did you get the documents requested?



Respondents to the survey indicated that they were granted at least partial access to the documents they requested in most instances.

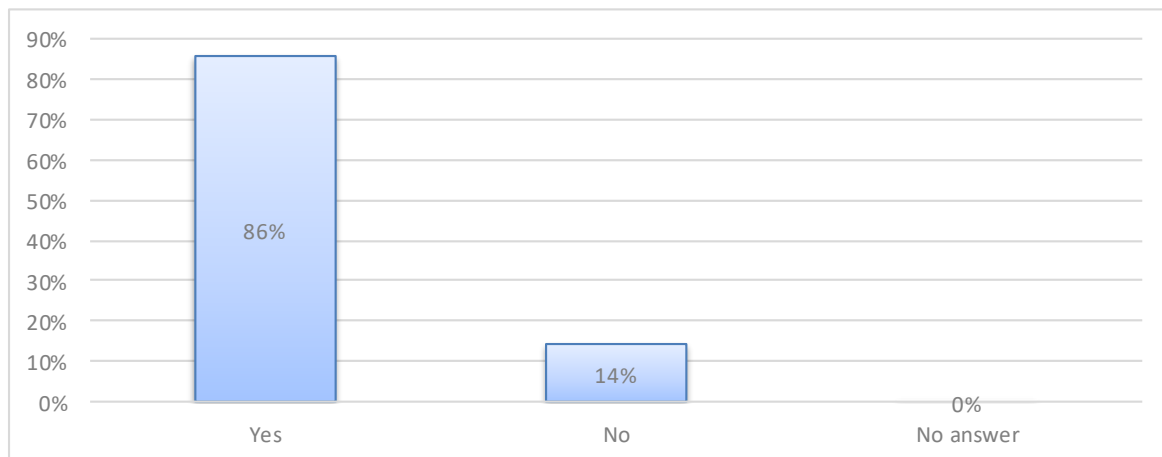
The three main EU institutions report differently on whether they granted access to requests. The Parliament provides information on the number of requests where access was granted as well as on the number of documents disclosed; the Commission reports on the number of requests; and the Council reports on the number of actual documents disclosed/not disclosed.

According to its report, in 2020, the Parliament granted full access for 91% of the initial requests, partial access for 2% and no access for 7%. However, as mentioned above, only 93 initial requests concerned documents not previously disclosed to the public. These 93 requests resulted in the disclosure of 1 173 documents.

The Commission granted full access for 55.7% of requests after the initial request, partial access for 25.3% and no access for 10.2%. For 8.8% of requests, no documents existed.

The Council reported that it granted full access to 84.1% of the documents requested, partial access to 4% and no access to 11.9%.

Q.8 If the institution refused or partly refused access, did you appeal the decision by making a confirmatory application?

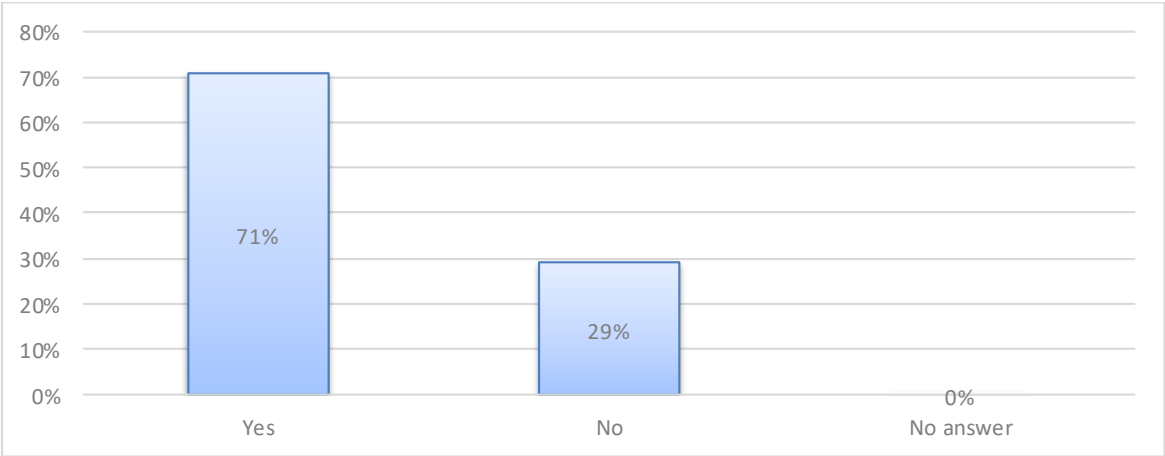


Q.9 If no, why not?

The majority of respondents said that the confirmatory procedure is lengthy. For journalists and researchers, for example, the requested documents were no longer relevant after a period of time, so they chose not to request a review. Some respondents considered the procedure too complicated, with a “difficult to navigate” legal framework, or that they did not receive adequate information on the confirmatory procedure.

Quote: “As a researcher it does not make sense to get involved in long processes. At least not every single time. Perhaps yes, if the matter is really important but often you just move on.”

Q.10 If yes, were further documents subsequently disclosed or partly disclosed following the confirmatory application?



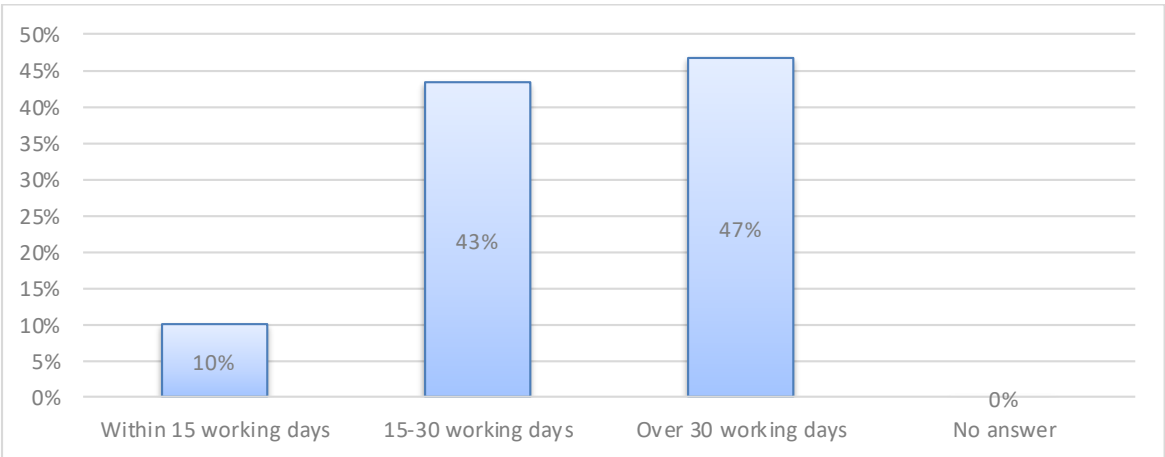
Where respondents requested that an institution review its initial decision refusing access (by making a confirmatory application), further access was granted in most cases.

The Commission’s report indicates that wider or even full access is often provided at the confirmatory stage. In 2020 for example, for 3% of the requests full access was provided, for 34.3% partial access, and for 49.4% no further access was provided. For 13.2% of requests, no documents were held.

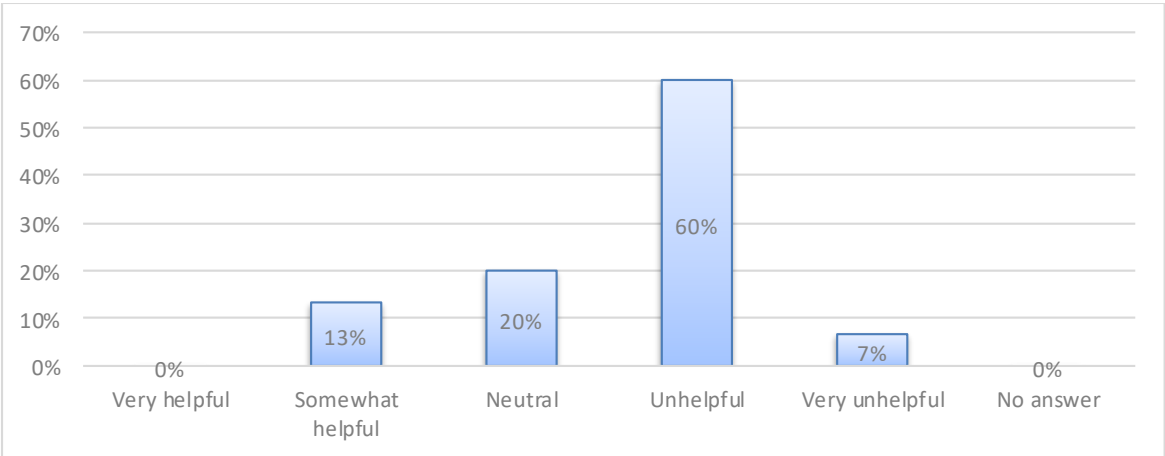
According to the Council's report, full access was given to 29.7% of the documents, partial access to 26.3% and no access to 44%.

The Parliament maintained its initial position in all (8) cases where a confirmatory application was made.

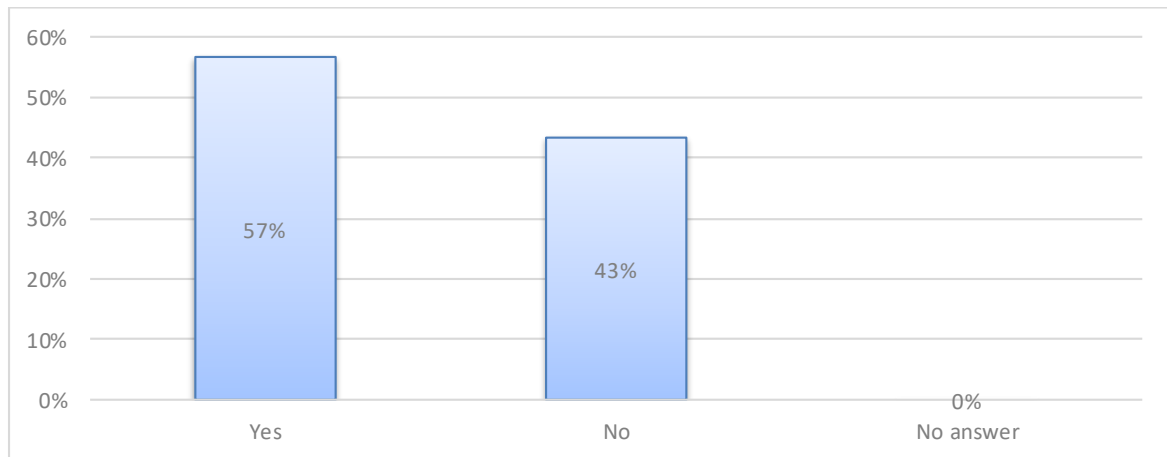
Q.11 How long did the appeal/review process take (time until confirmatory decision or tacit refusal)?



Q.12 Overall, how would you rate the responsiveness of the institutions, agencies or bodies to your requests?



Q.13 If an institution refused access or disclosed only parts of the requested documents, did you make a complaint to the European Ombudsman?



A majority of respondents indicated that they had turned to the European Ombudsman where the institution refused access following their confirmatory application.

The Ombudsman opened 50 inquiries in 2020 concerning decisions by the EU institutions to refuse access to documents. Of these, 28 related to decisions by the Commission and two each related to the Council and the Parliament.

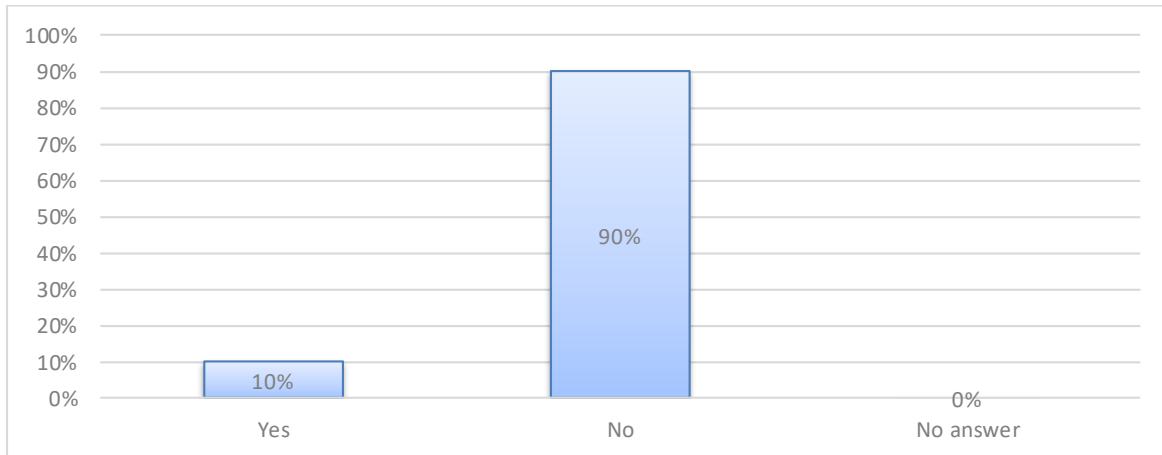
Q.14 If not, why not?

The majority of respondents said that the main reasons were lack of time: after a lengthy process requesting access from the institution (initial request and confirmatory application), which was often delayed, *“a complaint to the Ombudsman seemed like even more work”*. Some respondents invoked resource limitations.

Some respondents said that they were not refused access, and thus did not complain to the Ombudsman, but they did find problematic that the institutions did not meet the deadlines required by Regulation 1049/2001.

Some respondents received access or considered the reasons for non-disclosure to be justified.

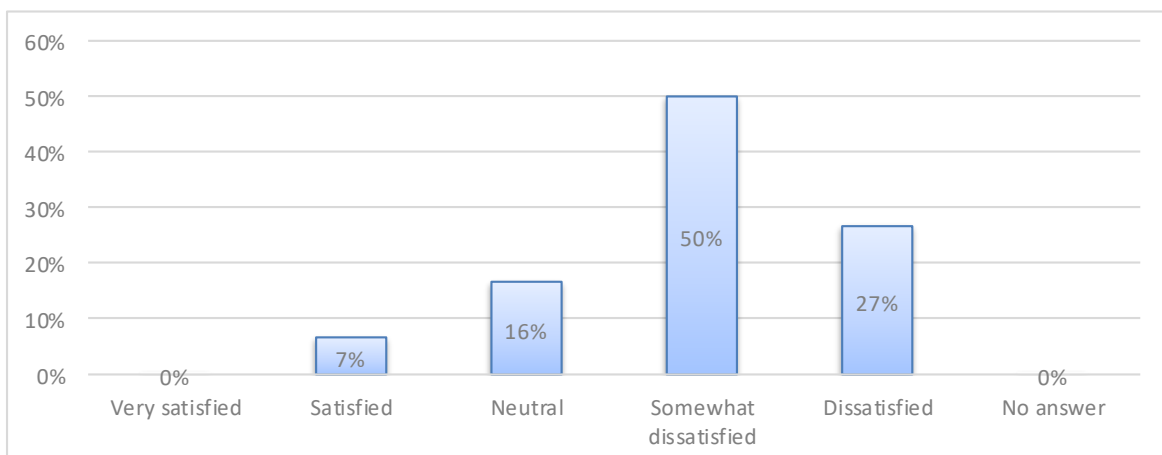
Q.15 Did you bring a case to the General Court of the EU?



The majority of the respondents to the survey chose not to bring a case to the court.

The institutions' reports also indicate that there are few legal challenges. The Commission was taken to courts seven times in 2020 concerning access to documents: six cases before the General Court and one appeal to the Court of Justice. In 2020, the Council had only one case pending before the General Court, which was brought in 2019. The Parliament had no actions lodged with the General Court in 2020, while one case was pending with the Court since 2017.

Q.16 Rate your overall experience of the process(es) for requesting access to documents.



Q.17 If dissatisfied, or somewhat dissatisfied, outline the reasons?

Almost all respondents indicated they were dissatisfied with the delays by the institutions in handling their requests. Delays were even longer during the COVID-19 pandemic. In some cases, it took the institutions up to a year to provide a reply/access. By that time, often the documents were no longer of use to the applicants. The respondents also noted that there is no recourse mechanism for failure to respond within the set deadlines.

Some respondents were dissatisfied with the arguments given for refusing access, finding them vague and general. Some also noted that sometimes the institutions do not take into account more recent case-law, or interpret case-law in a way that is disadvantageous from the viewpoint of the public's right to access. Some respondents questioned whether certain institutions overuse the exceptions foreseen under the Regulation 1049/2001, with a view to restricting access to documents.

Respondents also expressed dissatisfaction with some institutions' document registers, which they are obliged to keep. Often, they do not contain many key documents or are not up to date, making it difficult for the public to know what exists. Some respondents argued that more documents should be made available proactively, removing the need for individuals to make access requests.

Many respondents said that they often get access only at the confirmatory stage, raising questions about how requests are handled in the initial stage.

Some respondents were also dissatisfied with the documents management systems (registration, storage) and were surprised that requested documents did not exist. The respondents also noted different experiences with different EU institutions, bodies, offices or agencies.

Q.18 What could the EU do to improve the process for access to documents?

Many respondents took the view that a **cultural change is needed**. The majority of respondents believe that a **more proactive publication of documents** would be beneficial. Some respondents proposed **centralising the access to documents process in a common website** on which released documents would also be published.

Many respondents made suggestions to **improve document registers**, such as expanding their content, investing in their development, introducing/improving search functions, or making clear in

the registries which documents must be requested. Some respondents also pointed to further technical improvements, such as more **efficient document management systems**.

Many respondents raised the need to **speed up the procedures**. If delays are expected, the applicants should be advised about these in advance. Some respondents argued for **increasing the amount of staff dealing with access requests**, and for recruiting individuals that are committed to transparency and openness. They also suggested providing proper training to existing staff, in particular to staff dealing with initial requests.

Some respondents also argued that the institutions should make an effort to **properly and clearly explain the reasoning for the refusal**. They indicated other administrative practices they felt could improve the interaction when requesting access. These included providing templates for initial requests and confirmatory applications, listing the documents falling within the scope of the request, informing the applicants about consultations with third parties (who have an interest in the documents), and ensuring the objectivity of the staff handling confirmatory applications. Some respondents also called for better information about the provisions of Regulation 1049/2001, such as how to make the case that there is an “overriding public interest in disclosure”.

Other concrete suggestions included: **updating the legal framework, notably Regulation 1049/2001**; clearer appeal procedures and greater powers for the Ombudsman; reviews by the Ombudsman of the implementing rules of the institutions; and greater powers for the Court of Justice to enforce the law, such as by injunctions and imposing fines on institutions that systematically refuse to implement court rulings or delay decisions on access requests.

Q.19 Do you continue to request, or would consider requesting in the future, access to EU documents?



Despite the dissatisfaction with the lengthy and seemingly frustrating procedure, all participants indicated that they would continue to request public access to EU documents in future.

Conclusions

Overall, the responses received indicate that there is still much room for improvement in how the institutions give effect to the right of public access to EU documents. Some issues could be addressed within the existing legal framework. For example, institutions should ensure that the time limits are respected, that their initial replies are clear and well argued, and that more information is proactively published. However, for other issues, a change in the legal framework is needed. For example, by incorporating the existing case-law, making it easier for people to navigate the public access rules.