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PROTECTION OF AN INDIVIDUAL'S INFORMATION INTEREST IN THE LIGHT OF REGULATION NO. 1049/2001 ON PUBLIC ACCESS TO DOCUMENTS OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION

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Abstract The right to information, guaranteed by various legal acts, includes the right to access the content of documentation held by public entities. At the EU level, this right is regulated, inter alia, by Regulation (EU) No. 1049/2001 of the European Parliament and of the Council, dated 30 May 2001, regarding public access to documents of the European Parliament, the Council, and the Commission. The act outlines various measures and mechanisms that can be assumed to constitute instruments for protecting an individual's information interest. This article provides an analysis of the relevant provisions, which regulate these instruments. The in-depth characterization aims to enable a stance on the correctness of the protective function attributed to access to EU documentation itself, as well as to its constituent elements.

Keywords
access to information, public information, access to documents, European Union, protection of information interest

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1 Introduction

Ubiquitous in EU regulations[1] and an element of so-called good governance (Maher, 1997, Alemanno, 2014; see more: Craig, 2006: p. 351), the principle of openness and transparency guarantees any EU citizen and any natural or legal person residing or having a registered office in a member state the right to access documents of EU institutions, bodies, organs and organizational entities (Article 15 of the Treaty on the Functioning of the EU, hereinafter: TFE[2]). The right of access referred to above holds a special place in the catalogue of fundamental human rights set out in the Charter of Fundamental Rights of the European Union[3]and is often referred to as the right of defence (Šabić, 2021; Castilla, Pacheco and Franco, 2023; see also: Jain, 2012 and Godbole, 2000). Admittedly, this is not a defence in the classical sense of the term - implemented preemptively, but a preventive defence that corresponds to having the necessary knowledge of public affairs, which guarantees the ability of individuals to control and actively participate in public life. Indeed, access to public information is an efficient instrument for verifying the rule of law. As D.E. Harasimiuk and P. Szustakiewicz point out, "active citizen participation taking various forms from the simplest, *i.e.* access to information, to more complex ones, *i.e.* co-determination, is a way to strengthen the democratic legitimacy of the European Union and its institutions."(Harasimiuk, Szustakiewicz, 2021:61-73). Access to information is an instrument of the legitimacy of power exercised by EU bodies and institutions (Jurga-Wosik, 2012: 154; Jasińska and Jasiński, 2000: 89; Szwarc, 2001: 63). Individuals, non-governmental organizations, and other private entities need the right to information to be able to participate in public debates, to have an impact on the surrounding public space and the decisions made in this dimension (Földes, Martini and Jenkins, 2018; Cunliffe-Jones, Diagne, Finlay, Gaye, Gichunge, Onumah, Pretorius and Schiffrin, 2021). The benefits that flow from full awareness are indisputable. They are based, among other things, on the permissibility of the fight against corruption, disinformation, and the widespread abuse of power in various areas (see more: Földes, Martini and Jenkins, 2018 and also Cunliffe-Jones, Diagne, Finlay, Gaye, Gichunge, Onumah, Pretorius and Schiffrin, 2021). Moreover,

[1] See also Treaty on European Union, OJ C, pp. 15-368, Article 1 ad Article. 10 section. 3.
[2] Journal of Laws UE C 202 from 7.06.2016., pp 47-390.
[3] See: Article 42 of the Charter of Fundamental Rights of the European Union, OJ C 202 from 7.06.2016, pp. 389-405. As can be seen from the text of the Case C-135/22 P, *Breyer v REA*, this regulation confirms the right of access to documents.

although the effects of possessed, individual knowledge cannot affect the current activities of public entities, they can have an impact in the future by diverting from power its rulers, those who have been critically evaluated by public opinion. It has been rightly emphasized in the literature that in a state with a democratic system, awareness of what public authorities do, with what attitude and with what expediency is of predominant importance (Stiglitz, 2003: 115 and following).

While the above statement focuses on the activities of bodies within a country, it also finds its application in terms of entities with wider jurisdiction. The modern individual, being a citizen of the EU, becomes part of the larger world. Her thinking and needs are becoming cross-border in nature, going beyond the borders of a particular member country. Such an entity wants to have a broader knowledge of how various types of entities operate and is guaranteed the right to access documents produced and received in connection with proceedings before the EU institutions. The exercise of this right is guaranteed by the content of Regulation No. 1049/2001 of the European Parliament and of the Council of May 30, 2001, on public access to European Parliament, Council and Commission documents (hereinafter: Regulation 1049/2001)[4].

The main purpose of the work is to illustrate the elements of protection of the information interest of the individual, which is guaranteed by the content of the said EU act. It is a matter of cataloguing them, determining what they boil down to and determining whether they fully fulfil the protective function ascribed to them in the modern world. In achieving this, it is helpful to analyze in detail the rules governing the access procedure in question, where the very existence of such rules prejudges the emphasis on guaranteeing the broadest possible protection of the individual's information interest.

2 The essence and concept of an individual's informational interest

It is quite common to say that he who has knowledge has the power (Berdychowski, 2023). While this does not mean that knowledge alone entitles one to a position in the governing structures, awareness of certain things creates the ability to take certain

[4] OJ L 145 from 31.5.2001, pp. 43—48.

actions, whether to secure one's interests or the interests of a larger collective: the local or regional community, or society as a whole. This unlimited desire to acquire and possess knowledge about the surrounding world, about matters that directly or only indirectly affect an individual, finds no legal definition. However, starting from the colloquial understanding of interest and its possession, it can be said that informational interest necessarily involves the possession of an aspiration to independently seek and obtain certain information or come into possession of it with participation (due to the activity) of another party (a specific public or private entity). This characterization of the category in question based on the actual attitude of the individual, on the reference to what he expects and the actions he takes towards it to satisfy his aspirations reduces the understanding of interest to its actual nature. Importantly, however, due to the existence of various regulations both in the intra-state and EU space, which determine the conditions for applying for and receiving various knowledge (and public knowledge in particular), it is possible to assign a legal character to the category in question as well. These regulations form the legal basis for the existence and, above all, the implementation of the protection of an individual's information interest. In turn, the individual's information interest itself is the totality of the individual's needs and behaviours directed at acquiring information of interest to the individual using diverse means that have been sanctioned by law.

The content of Regulation 1049/2001 itself does not directly address the construction of an individual's individual information interest. On the contrary, the regulations in question clearly "highlight" the public interest, or more precisely, the need to protect it, entailing, on the one hand, the need to impose restrictions on accessibility, as referred to in Article 4(1)(a) of Regulation 1049/2001, or, on the other hand, justifying the process of accessibility (Article 4(2) of Regulation 1049/2001). In general, it should be said that the desirability of the accessibility guaranteed by the content of the presented legislation by serving to increase openness and transparency is closely related to the protection of the interest of the larger collective - the public interest. However, this does not mean a complete rejection of individuality as a characteristic of certain expectations of individuals. It appears on the occasion of relative restrictions on accessibility, where the protection of the commercial interests of an individual or a legal entity is mentioned. Notwithstanding the above, however, the unarticulated protection of informational

interests becomes apparent in connection with individual requests to guarantee accessibility to records. Indeed, as is clear from Article 2 of Regulation 1049/2001, documents shall be made available to the public upon, among other things, receipt of a written request from an entity with an interest in obtaining information covered by the content of a specific requested EU document.

3 Instruments for the protection of an individual's information interest in light of Regulation 1049/2001

The entry into force of Regulation 1049/2001 (on the 3rd of December) unified the rules organizing the system of accessibility to the records of EU institutions (Wasilewski, 2006: 4-13). Its preamble emphasizes the importance of the principle of openness and transparency in the activities of EU entities. These values enable citizens to participate more closely in the decision-making process at the supra-state level and ensure that EU administrative structures enjoy greater legitimacy and their work is more effective and accountable to citizens in a democratic system. This in turn allows divergences between a range of viewpoints to be openly debated, which contributes, among other things, to increasing citizens' confidence (Case C-57/16 P, *ClientEarth v European Commission*). The purpose of the regulation is to ensure the broadest possible right of public access to documents produced and held by EU institutions, which is served by:

1. legally formed principles of access to records (principle of subject and object universality, principle of unconditional access, principle of speed of access, principle of free access, principle of complaint, etc.)[5];
2. legally regulated instruments for the implementation of access to documentation containing in the mode of request (individual requests for documentation and outside the request mode (such as the release of documentation in the official gazette);
3. based on initial and renewed requests to guarantee the availability of documentation, the two-stage procedure (Articles 7 and 8 of Regulation

[5] For more on this see: the nomenclature of M. Jabłoński, K. Wygoda, M. Bernaczyk in relation to the rules under the Polish regulations of the Law of September 6, 2001 on access to public information: Bernaczyk, M., Jabłoński, M., Wygoda, K. (2005) *Biuletyn Informacji Publicznej. Informatyzacja administracji*. Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, p. 42; Bernaczyk, M. *Obowiązek bezwnioskowego udostępniania informacji publicznej*. Warszawa: Wolter Kluwer Polska, pp. 121-122.

1049/2001) and the deformalization of the access procedure, which boils down to the limited creation of prerequisites conditioning the process of requesting access to documentation;

4. information policy,[6] access procedures reporting system[7] and good administrative practices aimed at simplifying the exercise of the right of access to the records of EU institutions[8] (Articles 14, 15 and 17 of Regulation 1049/2001).

All of the above, due to the expediency of their formation and functionality, form a catalogue of instruments for the protection of information interest in public access to the documentation of the European Parliament, the Council and the Commission. This catalogue is not dichotomous (not disjoint). This applies primarily to the group relating to the rules organizing the process of access to documentation. This is because the isolation of one rule based on a certain legal regulation does not prevent the search for links to its content in the formation of another type of rule. An example that deserves to be highlighted on this subject is the relationship between the principle of subject universality from the party obliged to provide information and the principle of subject universality. Importantly, however, relationships of this kind also become apparent between other instruments of protection, which confirms the interlocking of certain regulations that are the basis for distinguishing the above-mentioned means of protecting an individual's information interest.

Although the EU legislator in recital 2 of Regulation 1049/2001 refers exclusively to citizens indicating their closer participation in the decision-making process, the circle of addressees of the right of access to the documents of the institutions is

[6] This is a preventive activity in which each institution takes the necessary steps to inform the public about the rights of individuals under Regulation 1049/2001.

[7] In this case, it is an activity that is not directly related to specific cases of release but is of a follow-up nature, providing an opportunity to form an image on the part of potential information stakeholders regarding respect for the content of Regulation 1049/2001 and its due implementation. Pursuant to Article 17 of Regulation 1049/2001, each EU institution publishes a report each year for the previous year, stating the number of cases in which the right of access to documents had been denied, together with the reasons for such denial and the number of sensitive documents not included in the register. And while reports of this kind and, more specifically, making them public, have a consequential effect, they can influence decisions made in the future as to what steps, if any, should be taken to satisfy a particular information expectation.

[8] This is a preventive activity related to the development of good practices by institutions regarding the procedure for access to records and the establishment of an internal inter-institutional committee to verify best practices on this subject, resolving possible conflicts occurring in this area and discussing postulated changes regarding the guaranteed right of access to institutional records.

much broader. Any EU citizen, or any natural or legal person residing or established in a Member State, is informationally entitled to access EU documentation (Article 2(1) of Regulation 1049/2001). Importantly, the principle of subject universality presented there can take on a broader or narrower meaning. This is in close connection with the obligatory or optional nature of the conduct of the subjects obliged to provide information. The catalogue of eligible subjects may be expanded when the institution decides to grant access to documents also to natural or legal persons other than EU citizens not residing or not established in a member state. This procedure is optional, and may or may not lead to going beyond the subjective - defined by the content of Article 2(1) of Regulation 1049/2001 - scope of the information obligation. Although this has been left to the discretion of the institution itself, nevertheless the fact of its legal regulation confirms the special care taken by the EU legislator to ensure that the scope of the party entitled to information can be as wide as possible. It is rightly emphasized by A. Jaskulski that it seems inexpedient not to provide access to documents to so-called non-EU entities if these entities could obtain access from the so-called authorized persons (Jaskulski, 2014:227). This is undoubtedly an argument in favour of the desire to guarantee broad protection of an individual's information interest, further strengthened by the principle of unconditional access process according to which the applicant is not obliged to justify his information interest (see also Case C-351/20 P, *Liviu Dragnea v European Commission*). The subject does not have to show why he is applying for a certain document, or what is the intended purpose of its use.

This, although it should not, in practice, may arouse interest on the part of the addressee, but in no way is it able to block the informational interest of the applicant and prevent the implementation of the submitted request. Not having to explain one's interest and procedure can act as a mobilizing and encouraging factor for potential applicants. It means that the procedure, even without greater familiarity with it, does not escape complexity and can result in the positive handling of the applicant's request - as intended by the interested informant. A factor that weakens this simplicity of the procedure, its unambiguous expression, is the fact that each

institution in its internal regulations specifies the rules governing access to its documents[9], which undoubtedly strikes at the assumption made in this study.

The above statements lead to the conclusion of the close relationship between the principle of unconditionality and the simplified nature of the disclosure procedure, under which the request may be submitted in any written form (including electronic form) in one of the permissible languages, may have any content, with the proviso, however, that the content be precise enough for the institution to which the request is addressed to be able to identify the document of information interest and carry out the disclosure process in accordance with the preferences of the applicant (Article 6 of Regulation 1049/2001). Undoubtedly, precision is an undefined category, which may raise problems of interpretation. A different understanding may be manifested by the applicant himself directing the request for documentation, and a different one by the institution receiving the request for access to the document. For this reason, the EU legislator allows for the possibility of clarifying the request in connection with the identified vagueness of its expression, while guaranteeing assistance from the addressee himself. It can come down to providing information on the use of public records or documents. It is also impossible not to mention the permissibility, provided by the legislator, of informal communication between the parties to the sharing process to find an appropriate solution when the request relates to a very long document or to a significant number of documents covered by a single request. These legal guarantees, designed for individuals, are aimed at preventing the possibility of disregarding information requests on the grounds of inability to understand it and the consequent impossibility of its implementation. This implies the legitimacy of the assumption of the pro-information attitude of the EU legislator, which is also confirmed in the catalogue of means by which an individual can come into possession of the information contained in certain documentation created by or for the activities of EU institutions. In this case, the instruments of general and general release (publication in the official gazette, the online portal of EU law - Eur-lex) come into play, as well as the means of individual proceedings, i.e. action on request[10]. In addition, what is important from the point of view of the assumption

[9] Which is no longer quite so clear and lucid for the interested party himself informatively.

[10] It is worth paying attention to the position of the Court of Justice, according to which a given institution cannot be considered to have fulfilled its obligation to grant access to a document if the document was disclosed by a third party and the applicant had the opportunity to become familiar with its contents - see Case C-761/18 P, *Päivi Leino-Sandberg v European Parliament*.

made in this article, Regulation 1049/2001 points to the instrument of a dataset - a register, the content of which guarantees basic information about the document, and thus makes it easier for individuals to familiarize themselves with more important communications, especially those that relate to the legislative process, or planned EU policy (Jurga-Wosik, 2012: 164).

Being at this stage of consideration, the content of Article 6(4) of Regulation 1049/2001 deserves special attention, where a kind of substantive vagueness is discernible. The European legislator indicates the guarantee of information and assistance by the institutions as part of the widely presented access procedure regarding the appropriate methods and places for submitting requests for access to specific documentation. Importantly, however, referring to the addressee of this training and information activity, it indicates the citizen without specifying in detail. Undoubtedly, due to the general nature of this regulation, the use of the term applicant would not be an optimal solution, since in this case, it is an activity that is only intended to stimulate individuals to feel the need to become applicants in a particular case. It is therefore about possible, potential or future applicants. However, it would not be wrong to use the catalogue of information-authorized parties referred to in Article 2(1) of Regulation 1049/2001. This assertion seems all the more reasonable if we take into account the subjective side defined by the content of the openness rule in Article 15 of the TFU, where reference is made to EU citizens, natural or legal persons residing or having their registered office in a Member State.

The opposite position in the process of presenting the principle of subject universality should be taken about the so-called second party, i.e. concerning the party obliged to provide information. The catalogue of these entities is limited, as indicated by the very title of the act, where only the EP, the Council and the Commission are mentioned.[11] Recital 10 of Regulation 1049/2001 indicates that: "to ensure the full application of this Regulation to all activities of the union, all agencies established by the institutions should apply the principles laid down in this Regulation" (see also Zieliński, 2014: p. 15-19 and Case T-439/08, *Kalliope Agapiou Joséphidès v European Commission and Education, Audiovisual and Culture Executive Agency*

[11] According to Recital 6 of Regulation 1049/2001, broader access to documents should be granted in cases where the institutions act in their legislative capacity, including under delegated powers.

(EACEA)). The literature has critically addressed the substantive scope thus defined (Wasilewski, 2006:4-13). Although this scepticism did not focus on the compactness of Regulation 1049/2001 itself - not on its subjective aspect, concerned the catalogue singled out in Article 255 of the TEC, it undoubtedly corresponded to the issue of accessibility to documentation. Attention was drawn to the unjustified exclusion from the catalogue in the question of such institutions and bodies as the Court of Justice, the Court of Auditors and the Economic and Social Committee and the Committee of the Regions, which have advisory functions (Wasilewski, 2006: 4-13). This criticism is not objectionable, especially given the content of Article 15 of the TFEU, where, taking into account the fundamental principle of openness, the scope of entities whose accessibility to documentation is referred to, on the one hand, highlights an unspecified group, and on the other hand, compared to Article 255 of the TEC, an expanded group. For it speaks of accessibility to the documentation of the EU institutions, bodies and organizational units.

The apparent narrowness of meaning can also be spoken of in the context of the subject of access, which is discussed in the deliberations underway. However, the use in this case of a formulation indicating only apparentness is not accidental. Indeed, undoubtedly referring to the very title of the regulation through which accessibility to documents, and not more broadly accessibility to information, is regulated, the claim of a narrow meaning framework of the subject side of the access process has a point. This is because what is at stake is the availability of materialized information, recorded in the form of a document that exists at the time of the information expectation (Wasilewski, 2006: 4-13). It is about accessibility to the content - to the content of the documentation, and not about the right to demand information about the document itself (about its existence, its creation, its purpose, etc.). At the same time, as R. Stankiewicz points out, it is irrelevant in this case whether it is a document made public, or whether it has only an internal character (Stankiewicz, 2016; see also: Kowalik-Bańczyk, Szwarc-Kuczer, Wróbel, 2012: 294). This, however, excludes the possibility of satisfying an information need regarding a message that is only in the head (in the thoughts) of an employee, or an official even if it fulfils the prerequisites of public knowledge.[12] A human being is not

[12] It eliminates the availability of processed information prepared, as it were, on request, on the order of the interested party based on the documentation in his possession. However, it does not eliminate the availability of so-called transformed information related to the permissibility of transferring information to a specific information

uncommonly regarded as a carrier of information subject to release, but not according to the contents of Regulation 1049/2001. This is because as long as the information is not reflected in the content of a specific document (as long as it is not put on paper, although paper, in this case, is only a contractual concept)[13], it is not covered by the information obligation in Article 2 of the act. This undeniably narrows the substantive scope of the subject of accessibility, but it is not able to derail the existence of the principle of subject universality. This is not the case if we take into account the broad definition of the construction of the document to which accessibility is referred in the text of Regulation 1049/2001 (see also: Report from the Commission on the implementation of the principles in EC Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission document). The content of Article 2(3) and Article 3 of Regulation 1049/2001 is also not insignificant in this regard since a document subject to disclosure is any content regardless of the medium (written on paper, stored in electronic form or as a sound, visual or audiovisual recording) relating to matters of policy, activity and decisions that are within the sphere of responsibility of the EU institutions. These are documents produced for the needs of the institutions, bodies and agencies themselves, and in the vast majority of cases, there is no reason why they should not be disclosed as an important treasure trove of knowledge about the EU (Jurga-Wosik, 2012: 153-170). This assertion applies to all documentation held by the EU institutions, that is, not only by the unmanufactured but also at their disposal (in their possession) and relating to all areas of EU activity.[14] Recital 7 of Regulation 1049/2001 already mentions accessibility to documentation related to the common foreign and security policy, as well as police and judicial cooperation in criminal matters. Thus, despite the limitation of accessibility to documentation, such shaping of the scope of the subject matter of the information obligation gives rise to the formulation of the rule of subject matter universality established to protect the information interest of the individual.

medium. Indeed, according to the contents of Article 10 of Regulation 1049/2001, the applicant gains access to the documents either by reading them on the site or by receiving a copy including, if one is available, an electronic copy following the preferences of the legislator.

[13] It's a term that can't be taken literally due to advancing technological developments.

[14] See viewpoints on the subject matter scope and legal basis for releasing documentation related to proceedings before EU institutions: Judgment of Supreme Administrative Court from 22.11.2012, I OSK 1868/12 https://orzeczenia.nsa.gov.pl/doc/2A979CC811_accessed: 3 August 2023, Judgment of Supreme Administrative Court from 26.04.2018, I OSK 1975/16https://orzeczenia.nsa.gov.pl/doc/67CD180A13 accessed: 3 August 2023, Judgment of Supreme Administrative Court from 25.07.2018, I OSK 1973/16 https://orzeczenia.nsa.gov.pl/doc/D1920575A5_accessed: 3 August 2023.

However, this universality (as is evident from the above observations) is not unlimited, and when talking about limitation, it is not only and exclusively about the content framework for defining the construction of the document, but also (if not primarily) about the content of Article 4 of Regulation 1049/2001. In it, the EU legislator creates absolute (unquestionable and requiring a damage test) and relative (contestable, entailing a damage test and a weighing of interests test) grounds for refusing to provide the expected documentation (Drobny, 2015: 23-29). A full analysis of Article 4 of Regulation 1049/2001 allows one to derive from its content the principle of limited access to public knowledge and relative accessibility. Among the first group of prerequisites, the legislator includes those related to the protection of the public interest: public security; defence and military affairs; international relations; the financial, monetary and economic policy of the community or a member state; as well as the privacy and integrity of the individual, in particular the protection of his or her personal data. The second, conditioned by the absence of an overriding public interest in favour of release, includes the commercial interests of an individual or legal entity including intellectual property; the security of legal proceedings and legal opinion; and the purpose of an inspection, investigation or audit. Similar conditioning based on the primacy of the public interest is evident in the permissibility of restricting access to documentation prepared by the institution for internal use or received by the institution in pending cases, as well as documentation containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned (even after a decision has been made) (Case T-377/21, *Eurecna SpA v European Commission* and Case T-72/20, *Satabank v European Central Bank*). In both cases, the possibility of invoking a limitation was legally determined by the likelihood of a violation of the institution's decision-making process, then, if access to the documentation were to occur. The particular limitation of accessibility becomes apparent in connection with the content of Article 9 of Regulation 1049/2001, where the issue of extraordinary treatment of sensitive documents referred to as top secret arises.[15] Undoubtedly, the presence of limiting premises weakens the assumption that the access procedure in question has the status of an institution for the protection of the information interest of individuals, for it eliminates the assumption of the absolutism of the right of

[15] Due to their highly sensitive content, certain documents should be treated with special care. Arrangements relating to informing the European Parliament about the content of such documents should be made in the form of an inter-institutional agreement.

access to public information and its variety based on the availability of documentation. However, it should not be forgotten that despite the high aspirations of striving for full awareness, to have extensive knowledge on the subject of the functioning of public entities, every piece of information cannot be obtained, and indeed it would not be desirable because of values as valuable, if not more valuable than the right to the information itself. It is important, however, that the legally defined catalogue of limiting premises is not subject to expansion in practice with the institutions' use of their generality of expression and lack of specificity.

In turn, allowing access to the documentation despite the existence of a limiting condition (Article 4(2) of Regulation 1049/2001) based on the existence of an overriding public interest determines the existence of the rule of relative accessibility, further strengthening the position on the protection of informational interest under the access procedure in question. In addition, it should not be forgotten that any exceptions as exceptions to the general rule, i.e. desirable accessibility to documentation, should be interpreted narrowly (the threat to a particular good justifying limiting accessibility must be real and not merely potential and requires justification by the refusing institution), and an important weakness for them is the legally formed timeliness of invoking a specific limitation. Under paragraph 7 of Article 4 of Regulation 1049/2001, exceptions to the guaranteed availability of records apply only for such a period as is justified by the content of the records covered by the information expectation. The EU legislator seeks to make this term more concrete by indicating a period not exceeding 30 years. Importantly, however, being aware of the significance of the restriction dictated by the individual's privacy or commercial interests provides for the permissibility of extending the deadline. This also applies to restrictions on accessibility based on the sensitivity of the documentation.

The legislature's care for the protection of the individual's information interest becomes even more apparent, or at least it should be if we consider strictly procedural rules. Although each rule by its nomenclature and essence is designed to organize and streamline the procedure to which it is assigned, or within the framework of which it was developed, among all the rules of access procedure it is possible to distinguish those whose role in this regard is dominant. This group should be referred to as strictly procedural rules, those that do not so much refer to

the subject or object of the sharing procedure, but which present the manner of its proper conduct and due execution. These are rules relating to time limits, the costs of the access process, or illustrating the issue of complaisance in connection with lack of informational satisfaction. The content of Articles 7 and 8 of Regulation 1049/2001 makes clear the existence of basic deadlines and supplementary deadlines. The group of basic deadlines includes immediacy and a period of 15 working days. A request for access to documents (initial and renewal) is processed immediately. Within 15 working days from the date of registration of the request, the institution either grants access to the requested document or provides access to the document during this period following the aspirations of the applicant. Importantly, however, in exceptional cases dictated, for example, by the breadth of the document covered by an information request or a significant number of documents covered by a single request, the basic deadline may be extended by another 15 working days (supplementary deadline). However, this admissibility is conditional on prior notification of the extension of the deadline and the provision of reasonable reasons for the delay. The EU legislator, creating basic deadlines, does not differentiate between them depending on the means of access adopted. It also does not clarify what specifically is meant by this promptness of the execution of the request. Using doctrinal views, it should be pointed out that prompt action involves the conduct of the entity implemented as soon as possible.[16] Although it is impossible to find precision in this definition, there can be no question of tardiness in the proceedings of the institution either. Although there may be doubts about the fact that this relatively short fifteen-day period runs not from the date of service of the application by the interested party, but from the date of registration of the application by the institution, which was not specified by the legislator in any way. This kind of underdetermination seems to be very dangerous (Jaskulski, 2014: 229). Despite the (as it may seem) short time limit for processing the application, the legislator has allowed itself to create a mechanism for implicitly, though lawfully, extending the deadline, when the time for registering the application extends into an unspecified period. This leads to the conclusion that not in every case the regulations of the regulation in question can guarantee the implementation of the rule of speed

[16] Piotr Sitniewski, referring to this immediacy found in the Polish regulations of the Law of September 6 2001, on access to public information (Journal of Laws of 2022, item 902), points out that it should "close" within a few hours, as opposed to the deadline without undue delay, which should be counted in days, - see: Sitniewski, P. (2016) *Dostęp do informacji publicznej. Pytania i odpowiedzi. Wzory pism*, Warszawa: Wolters Kluwer Polska, p. 93.

of proceedings thus weakening the protective status that is attributed to the institution of access to the records of the institution.
Under Article 10 of Regulation 1049/2001, the applicant obtains access to the documents of interest through a guaranteed opportunity to examine them (the original) on the spot, as well as by obtaining a copy, including, if technically possible, an electronic copy. Satisfaction of information expectation on the spot, at the seat of the institution, through direct access in electronic form as well as through the register is covered by the principle of free of charge. However, it is not absolute, since not every provision is free of costs preceding and following the provision process itself. This group includes the provision of copies of documentation of informational interest. The applicant may be charged with the cost of producing a copy of the documentation and sending it to the interested party. However, such a fee must be appropriate - proportional. In this case, it is about proportionality adequate to the cost of performing the necessary procedures (making a copy of the document and its service). For this reason, copying so-called small quantities, i.e., less than 20 A4 pages of a document, does not incur a fee for the process of access. In addition, what is worth noting, the legislator does not provide for fees related to the effort and time spent by the employee.

Shaped to protect the information interests of the individuals concerned, the two-stage access procedure allows for the processing of initial and repeat requests. She undoubtedly prolongs the access procedure, which may act as depreciating the principle of the speed of access, but is related to the so-called second chance to satisfy the information expectation. It allows reasserting the right of access to the document when the first step of the procedure ends with a refusal letter indicating the reasons for total or partial refusal. Similarly, the situation is similar when within the legal time limit the applicant does not receive any response from the institution to which he addressed his information request. Referring to the positive aspects of the two-stage examination of applications, it is impossible not to notice the lack of devoluteness desired in this respect (Jaskulski, 2014: 229). Re-examination of the application carried out by the same institution that has already taken a negative position on the case is not an ideal solution. On the one hand, it may reflect the legislator's desire to ensure a deeper analysis on the part of the institution deciding on access, but on the other hand, it deprives the proceedings of objectivity in the evaluation carried out by the same entity that has already previously concluded the

proceedings with an appropriate decision. The existence of an independent entity that would conduct the re-examination of the application would undoubtedly be a better solution and in fact would strengthen the two-stage procedure in its positive perception by those interested in information.

The lack of instantiation outlined above, which is assessed unequivocally as a defect, cannot be "cured" by the principle of accusatorial procedure as indicated by the EU legislator in Article 8(3) of Regulation 1049/2001. In the event of a negative response to a renewed request for access to records, the institution shall inform the applicant of the legal remedies available to him, namely the possibility of initiating legal proceedings against the refusing institution, as well as the right to file a complaint with the European Ombudsman (see Articles 228 and 263 TFU). This duality of independent safeguards guaranteed by the EU legislator gives a sense of special care on the part of the legislator to ensure that an individual who is dissatisfied with the termination of the proceedings has the opportunity to further assert his rights. Seemingly, the assured permissibility of the choice of means appears to be of particular importance when it comes to the protection of an individual's informational interest. Importantly, however, it must be pointed out that the regulation itself does not present the dissimilarities of the present modes and the consequences they entail, which is not without disadvantages for the average individual without sufficient knowledge of the EU (Jaskulski, 2014: 230). Although the mere fact of legally guaranteeing an individual a legal remedy looks encouraging when it comes to the access procedure, it does not guarantee the successful completion of the proceedings related to the remedy. The danger of a long waiting time for a final judgment and the threat of being burdened with legal costs of the proceedings on the part of those asserting their rights through the courts, as well as the lack of instruments in the European Ombudsman's competition group to guarantee the possibility of enforcing the position of authority against an institution that refuses access to records, unfortunately, act as a deterrent to those concerned and depress the assumption that the measures of Article 8(3) of Regulation 1049/2201 have the status of instruments for the protection of an individual's informational interest (Jaskulski, 2014: 230; Jurga–Wosik, 2012: 168).

5 Conclusion

In conclusion, it must be pointed out that the content of Regulation 1049/2001 demonstrates the care taken by the EU legislator to guarantee the accessibility of the records of the EU institutions. Moreover, it confirms the assumption that the access to records is an important instrument for the protection of information interest. The analysed regulation contains several (diverse) measures which enable the exercise of these rights.

Importantly, however, a detailed analysis of the content of the various regulations presenting the aspect of protection of an individual's information interest within the framework of public access to EU documentation makes it apparent that these measures are not without flaws. Despite their apparent design with the information needs of individuals in mind, they are unable to fulfil their primary role. This is most visible in those aspects in which the average individual undertaking the investigation or defence of his or her rights has the greatest hopes, i.e procedural issues.

It is also significant that many of these weaknesses in procedure do not arise directly from the content of the act's provisions themselves but become apparent only after their deeper analysis. Over the years, despite the criticized lack of devolutive effect of the procedure – due to the seemingly properly formed and short deadlines of the access process, as well as considering the totality of the barriers that accompany the complaint principle in its implementation – the EU legislator has not decided to make the desired changes.

Thus, despite the claim in the literature that the development of the right to information has been significantly influenced by the inclusion in the Charter of Fundamental Rights of so-called modern rights (Jasiński, 2003:203; Kakarenko, 2009:379; Jasińska and Jasiński, 2000: 89), the situation will not change if the individual and his information needs are not fully brought to the fore. This must be reflected in the relevant legal regulations and the properly implemented information policy of the institution, so that the individual not only feels the need to acquire certain information but also has the feeling that this need can be realistically satisfied because, in the access procedure, there are such mechanisms and means that not

only in theory but also in practice will allow him to achieve the desired goal.[17] Currently, this is of particular importance, as the previously existing language barriers are receding into the background and no longer pose such a problem for the average individual. Transparent, understandable, verified and easily accessible information can popularize communication as a basis for the public's confidence in the management of general affairs. (Streudt, Morales and Sanchez Montoya, 2020; Morales, 2017)[18]. Therefore, guaranteeing real access to it must not be illusory but must find its reflection in both law and practice.

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[17] Indeed, it is not that the individual has to fight for knowledge by all means, even though, as M.M. Semwal and S. Khosia point out, "The improvement of people's lot is linked to the struggle for knowledge.", see: Semwal, M.M. and Khosla, S. (2008) *Right to information and judiciary*, The Indian Journal of Political Science, 69(4), https://www.jstor.org/stable/41856475 accessed: 2 October 2023.

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