



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

The Secretary General

Brussels, 21.12.2011
SG.B.5/MKo/rc- Ares(2011)

Ms Katarzyna Batko-Toluc

by e-mail only: ask+request-7-
3d635d35@asktheeu.org

**Subject: Your confirmatory application under Regulation 1049/2001
regarding public access to documents – GESTDEM 2011/5046**

Dear Ms Batko-Toluc,

I refer to your e-mail of 31 October 2011, registered on 8 November 2011, in which you submit a confirmatory application in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents² (hereafter: Regulation 1049/2001). You request a review of the position taken by the Directorate-General for Information Society and Media (hereafter DG INFSO) on 21 October 2011, in reply to your initial request for access to documents of 3 October 2011.

I also refer to our letter dated 29 November 2011 by which the time limit for handling your application was extended by 15 additional working days, pursuant to Article 8(2) of the Regulation 1049/2001. The deadline for the present decision expires on 20 December 2011.

In your initial application of 3 October 2011, you requested access to: "*electronic copies of whole correspondence between Polish government and the European Commission as regards transposition of Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information since January 1st, 2005*".

DG INFSO, based on Article 4, paragraph 2, second and third indents, concerning the refusal of access to a document where disclosure would undermine the protection of the court proceedings and the protection of investigations, denied you access to the documents concerning incorrect transposition of the Directive on the re-use of public sector information. DG INFSO, informed you that the requested documents compose various administrative letters proceeding or accompanying the infringement procedure,

² OJ L145 of 31.05.2001, p. 43

infringement documents including letter of formal notice, reasoned opinion and replies to those documents as well as all pleadings before the Court. Given that the case was pending before the European Court of Justice those documents were covered by the said exception. Finally, DG INFSO informed you that the judgement in case C-362/10 concerning the infringement case in question was expected on 27 October 2011.

In your confirmatory application of 31 October 2011 you requested access to the same documents as in your initial request. You have also stated that, as anticipated, on 27 October 2011 the European Court of Justice delivered its judgement in the case at reference.

Having examined the administrative file I have identified the following documents as falling within the scope of your request:

(1) Commission own documents:

- (a) Letter of 29/03/2007 (INFSO/E4/LF/mr D(2006)810422);
- (b) Letter of 31/07/2007 (INFSO/E4/YAT/le D(2007)831752);
- (c) Letter of 16/10/2008 (K(2008)5819);
- (d) Letter of 25/06/2009 (K(2009)4818);
- (e) Letter of 16/11/2009 (INFSO/E4/GP/mm D(2009) 144440);
- (f) Letter of 04/02/2010 (INFSO/E4/GP/le D(2010)202217).

(2) Documents originating from Poland:

- (a) Letter of 3/08/2007 (DP-I-33-131/07);
- (b) Letter of 17/12/2008;
- (c) Letter of 24/08/2009 (WIP-UD/6522/2009);
- (d) Letter of 26/02/2010 and accompanying letter of 1/03/2010 (ZST-T/KW/4023/19-05/10).

Given the fact that the European Court of Justice has recently rendered its judgement in the case concerning the infringement procedure against Poland at issue, I have carefully re-assessed your request under the provisions of Regulation 1049/2001 and I am pleased to inform you that I can grant full access to the documents mentioned under (1) above, copies of which are enclosed to this decision.

Owing to the fact, that the consultation process with the Polish authorities has not yet been completed, I reserve my position as regards the documents originating from Poland mentioned under (2).

With regard to these 4 documents, you will receive a separate decision in due time, once the ongoing consultation process with the respective national authorities has fully been accomplished.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Catherine Day'.

Catherine Day

Enclosure – Annex 1, comprising 6 documents.