



EUROPEAN COMMISSION

Brussels, 17.3.2024
C(2024) 1865 final

Mr Carlo Martuscelli

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 – EASE 2023/1587**

Dear Mr Martuscelli,

I refer to your e-mail of 22 May 2023, registered on the same day, in which you submitted a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter ‘Regulation (EC) No 1049/2001’), requesting a review of the initial reply to your application EASE 2023/1587.

Please accept our apologies for the delay in providing you with a reply to your confirmatory application.

1. SCOPE OF YOUR REQUEST

In your initial application of 10 March 2023, registered on 13 March 2023, you requested access to:

- ‘[a]ll documents related to decision by the European Commission not to grant (...) access to text messages and other documents relating to the exchange between President Ursula von der Leyen and Albert Bourla, the chief executive of Pfizer, since January 1, 2021, as set out in the following Freedom of Information request:
https://www.asktheeu.org/en/request/exchange_between_president_von_d#incoming-31706’.

¹ OJ L 345, 29.12.2001, p. 94.

² OJ L 145, 31.5.2001, p. 43.

You mentioned that you are specifically interested in the disclosure of the ‘emails, meetings, reports, transcripts etc, that would provide a record of how that decision was taken’.

- ‘any internal Commission documents responding [to] the European Ombudsman's decision to classify the Commission's refusal to provide the text messages as maladministration (see here: <https://www.ombudsman.europa.eu/en/press-release/en/158303>)’. You mentioned that ‘[t]his can include, but isn't limited to, documents, emails and memos, produced by the Directorate General for Legal Services or for Transparency evaluating the decision’.

In the reply of 4 May 2023, the Secretariat-General identified the following 14 documents as falling under the scope of your request:

- With regard to the ‘documents related to decision by the European Commission not to grant (...) access to text messages and other documents relating to the exchange between President Ursula von der Leyen and Albert Bourla (...)’, more specifically concerning the Commission Decision C(2021)5592 adopted on 21 July 2021 in reply to the access to documents request GESTDEM 2021/2908:
 - 1) Confirmatory application of 28 May 2021, ref. Ares(2021)3537787;
 - 2) Request for contribution sent to unit E4 of the Secretariat-General of 28 May 2021, ref. Ares(2021)3538764;
 - 3) Contribution from unit E4 of the Secretariat-General of 28 May 2021, ref. Ares(2021)3542277, including the following annexes:
 - 3.1 Email correspondence between unit E4 of the Secretariat-General and the President’s cabinet, 4-20 May 2021;
 - 3.2 Identified document – Letter from Pfizer’s CEO to the President of the European Commission of 27 April 2021;
 - 3.3 Identified document – Email from Pfizer to the President of the European Commission of 28 April 2021;
 - 3.4 Identified document – Read-out of the videoconference between President von der Leyer and CEOs of pharmaceutical companies of 31 January 2021;
 - 4) 1st letter of extension of the deadline, ref. Ares(2021)3991833;
 - 5) Reply from the President’s Cabinet of 23 June 2021, ref. Ares(2021)4123628;
 - 6) Approval of draft reply from unit E4 of the Secretariat-General, dated 25 June 2021, ref. Ares(2023)2889232;
 - 7) Consultation of the Legal Service on the draft confirmatory decision of 28 June 2021, ref. Ares(2021)4193619, including:
 - 7.1. Annex, draft confirmatory decision of 28 June 2021;
 - 8) Approval of the draft confirmatory decision from the Legal Service of 7 July 2021, ref. Ares(2021)4412983, including:
 - 8.1 Annex, draft confirmatory decision of 7 July 2021 and
 - 9) 2nd holding letter of 9 July 2021, ref. Ares(2021)4466082.

- With regard to the ‘internal Commission documents responding [to] the European Ombudsman's decision to classify the Commission's refusal to provide the text messages as maladministration’:

10) Commission reply to the European Ombudsman of 27 June 2022, reference C(2022) 4589 final.

The Commission department:

- granted full access to documents 3.4 and 10;
- granted wide partial access to documents 3.2 and 3.3, subject only to redactions due to the need to protect the personal data therein, on the basis of the exception laid down in Article 4(1)(b) of Regulation (EC) No 1049/2001;
- refused to grant access to the remaining documents, i.e. to documents 1, 2, 3, 3.1, 4, 5, 6, 7, 7.1, 8, 8.1 and 9 on the basis of the exception set out in the second indent (protection of court proceedings and legal advice) of Article 4(2) of Regulation (EC) No 1049/2001. The Secretariat-General argued that these documents have a link with the ongoing proceedings before the General Court in Case T-36/23³. The initial reply explained that ‘these [Court] proceedings aim at challenging the Commission’s confirmatory decision with reference C(2022)8371 final and internal reference GESTDEM 2022/2678 of 15 November 2022. In the latter decision, the applicants requested access to the same instant messages as in the framework of the Decision C(2021)5592 final (internal reference GESTDEM 2021/2908) in relation to which you have submitted your initial application’.

In your confirmatory application of 22 May 2023, you mention that the privacy concerns can be ‘easily addressed by blacking out the names of the officials involved (...) (within reasonable limits)’. With regard to the applicability of the exception laid down in Article 4(2), second indent (protection of court proceedings and legal advice) of Regulation (EC) No 1049/2001, you ‘recognize the Commission's right to not jeopardize its legal defense’, but also argue that ‘this cannot be used as a blanket rationale to block any attempts at public scrutiny into either the third Pfizer contract or the reasons for not disclosing the text messages to [the applicant in GESTDEM 2021/2908]’. You also contend an overriding interest in the disclosure of the documents requested, because the applicant in GESTDEM 2021/2908 ‘was conducting a journalistic investigation into the largest COVID-19 vaccine procurement contract that the Commission entered into, and one in which it appears that the Commission President took an anomalous role when compared with the other contracts signed. It is in the public's interest to understand why exactly there was no disclosure as requested (...) in order to determine whether or not the

³ [https://curia.europa.eu/juris/liste.jsf?nat=or&mat=or&pcs=Oor&jur=C%2CT%2CF&num=T-36%252F23&for=&jge=&dates=&language=en&pro=&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&oqp=&td=%3BALL&avg=&lgrc=en&lg=&page=1&cid=2368645](https://curia.europa.eu/juris/liste.jsf?nat=or&mat=or&pcs=Oor&jur=C%2CT%2CF&num=T-36%252F23&for=&jge=&dates=&language=en&pro=&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&oqp=&td=%3BALL&avg=&lgrc=en&lg=&page=1&cid=2368645).

Commission is acting to occult any irregularities in these negotiations.’ Furthermore, you point out that both the applicant in GESTDEM 2021/2908 and you ‘are journalists exercising our professional duties with a capacity to inform the public’.

Your arguments will be addressed in the corresponding sections below.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a review of the reply given at the initial stage.

Following an assessment of the arguments brought forward in your confirmatory application, the Secretariat-General first notes that its scope must be limited only to the review of the documents referred to in the initial reply to which public access, even partial, was refused (i.e. only to documents 1, 2, 3, 3.1, 4, 5, 6, 7, 7.1, 8, 8.1 and 9).

After a concrete examination of the aforementioned documents, I would like to inform you that partial access can be granted to documents 4 and 9, subject only to the redaction of the personal data therein, in application of the exception provided in Article 4(1)(b) of Regulation (EC) No 1049/2001. However, I regret to inform you that I must confirm the initial reply refusing the disclosure of documents 1, 2, 3, 3.1, 5, 6, 7, 7.1, 8 and 8.1, on the basis of the exception set out in the second indent (protection of court proceedings and legal advice) of Article 4(2) of Regulation (EC) No 1049/2001. The disclosure of these documents risks undermining the Commission’s position and the principle of equality of arms in the ongoing Court proceedings in Case T-36/23, *Stevi and The New York Times v Commission*. Detailed reasons are set out hereunder.

2.1. Protection of privacy and the integrity of the individual

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides that ‘[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data’.

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁴, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁵ (hereafter ‘Regulation (EC) No 45/2001’) becomes fully applicable.

⁴ Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd* (hereafter referred to as ‘*European Commission v The Bavarian Lager* judgment’) C-28/08 P, EU:C:2010:378, paragraph 59.

⁵ OJ L 8, 12.1.2001, p. 1.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC⁶ (hereafter ‘Regulation (EU) 2018/1725’).

However, the case-law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

In the above-mentioned judgment, the Court stated that Article 4(1)(b) of Regulation (EC) No 1049/2001 ‘requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, and in particular with (...) [the Data Protection] Regulation’⁷.

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’.

As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), ‘there is no reason of principle to justify excluding activities of a professional (...) nature from the notion of private life’⁸.

Documents 1, 2, 3, 3.1, 4, 5, 6, 7, 7.1, 8, 8.1 and 9 contain personal data such as the names, surnames and functions of European Commission officials not holding a senior management position. In addition, they also contain the surname and contact details of natural persons who are not public figures acting in a public capacity.

The names⁹ of the persons concerned, as well as other data from which their identity can be deduced, undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

Pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725, ‘personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if ‘[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject’s legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests’.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, can the transmission of personal data occur.

⁶ OJ L 295, 21.11.2018, p. 39.

⁷ *European Commission v The Bavarian Lager* judgment, cited above, paragraph 59.

⁸ Judgment of the Court of Justice of 20 May 2003, *Rechnungshof and Others v Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

⁹ *European Commission v The Bavarian Lager* judgment, cited above, paragraph 68.

In Case C-615/13 P (*ClientEarth*), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data¹⁰. This is also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your confirmatory application, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subjects' legitimate interests might be prejudiced.

Notwithstanding the above, there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by the disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, it is necessary to conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data in Documents 1, 2, 3, 3.1, 4, 5, 6, 7, 7.1, 8, 8.1 and 9, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by the disclosure of the personal data concerned.

2.2. Protection of court proceedings

The second indent of Article 4(2) of Regulation (EC) No 1049/2001 provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: (...) court proceedings and legal advice (...) unless there is an overriding public interest in disclosure'.

In its judgment in Case T-84/03¹¹, *Turco v Council*, the General Court underlined that the exception provided in the second indent of Article 4(2) of Regulation (EC) No 1049/2001 protects two distinct interests: court proceedings and legal advice. In the present case, this exception concerns the protection of court proceedings.

¹⁰ Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Food Safety Agency*, C-615/13 P, EU:C:2015:489, paragraph 47.

¹¹ Judgment of the Court of First Instance (now the General Court) of 23 November 2004, *Maurizio Turco v Council*, T-84/03, EU:T:2004:339, paragraph 65.

As stated in the initial reply of 4 May 2023, the refusal to disclose documents 1, 2, 3, 3.1, 5, 6, 7, 7.1, 8 and 8.1 is based on the need to protect pending court proceedings.

These documents are part of the file GESTDEM 2021/2908, which concerns, as mentioned in your application, a request for access to '[t]ext messages and other documents relating to the exchange between President Ursula von der Leyen and Albert Bourla, the chief executive of Pfizer, since January 1, 2021'. The Commission's final reply to this request is set out in the Commission Decision C(2021)5592 of 21.7.2021.

The following year the Commission received another access to documents request, registered under the reference number GESTDEM 2022/2678, concerning the 'text messages between President Ursula von der Leyen and Albert Bourla, the chief executive of Pfizer, from January 1, 2021 to the [date of the request]'. As can be seen, the scope of the application GESTDEM 2022/2678 overlaps with that of the application GESTDEM 2021/2908. In an action brought before the General Court on 25 January 2023, in Case T-36/23, the applicant in GESTDEM 2022/2678 seeks the annulment of the Commission's position expressed in its confirmatory Decision C(2022)8371 of 15.11.2022, in relation to the above-mentioned text messages.

As a result, in the Secretariat-General's assessment, the documents requested in the context of the present application are closely linked with the subject-matter of the ongoing Court proceedings. The underlying documents relate to the internal preparation of the position eventually expressed by the European Commission in Decision C(2021)5592, which are effectively relevant for the ongoing Court proceedings in Case T-36/23, which relate to another access to documents request with a similar scope.

Although the documents requested, i.e. documents 1, 2, 3, 3.1, 5, 6, 7, 7.1, 8 and 8.1, are not strictly speaking part of the pleadings lodged with the Court, they are documents drawn up in the context of the Commission's assessment of the confirmatory application submitted in the file GESTDEM 2021/2908; they represent internal exchanges between several Commission departments and reveal preliminary views on the position adopted in the confirmatory decision in the file GESTDEM 2021/2908, whose scope overlaps with that of the confirmatory decision whose annulment is sought in Case T-36/23. Those views are thus directly related to this ongoing Court case.

As mentioned in the initial reply of 4 May 2023, the General Court confirmed in the *Philip Morris* judgment in Case T-796/14¹² that the scope of the exception relating to the protection of court proceedings is not limited to the protection of documents drawn up solely for the purposes of specific judicial proceedings, such as pleadings, but also of documents whose disclosure is liable, in the context of specific proceedings, to compromise the equality of arms, which is a corollary of the very concept of a fair trial. The Court mentioned in paragraph 88 of this judgement that, for this exception to apply, '(...) it is necessary that those documents should reveal the position of the institution concerned on contentious issues raised during the court proceedings relied upon'.

¹² Judgment of the General Court of 15 September 2016, *Philip Morris Ltd v Commission*, T-796/14, EU:T:2016:483, paragraph 88.

As explained above, the documents requested concern the position of the Commission on issues that are, at present, subject to court proceedings. Their public disclosure is liable, in the context of those specific pending proceedings, to compromise the equality of arms and the atmosphere of serenity in which the exchange of arguments by the parties must take place. This would happen since only the Commission would have their internal, preliminary assessment disclosed to the other party and to the public. I would like to remind you that documents disclosed under Regulation (EC) No 1049/2001 are disclosed to the public at large (*erga omnes*) and not only to the applicant who originally requested the document.

In this regard, I can point out that the Court of Justice stated in its *API* judgment in Joined Cases C-514/07 P, C-528/07 P and C-532/07 P that ‘such a situation could well upset the vital balance between the parties to a dispute – the state of balance which is at the basis of the principle of equality of arms – since only the institution concerned by an application for access to its documents, and not all the parties to the proceedings, would be bound by the obligation of disclosure’¹³.

Furthermore, please note that in the *Philip Morris* judgment in Case T-18/15¹⁴, the General Court ruled that ‘the principle of equality requires the institution by which the contested act was issued to be in a position effectively to defend the legality of its actions before the courts. That possibility would be seriously compromised if the institution in question were obliged to defend itself, not only having regard to the pleas in law and arguments raised by the applicant (...), but also having regard to the positions taken internally concerning the legality of the various options envisaged in the context of the drawing up of the act in question (...)’.

In Case T-851/16, *Access Info Europe*¹⁵, the General Court confirmed that ‘although those documents have not been drawn up in the context of specific court proceedings, the integrity of the court proceedings concerned and the equality of arms between the parties could have been seriously compromised if parties were to benefit from privileged access to internal information belonging to the other party and closely connected to the legal aspects of pending (...) proceedings’.

¹³ Judgment of the Court of Justice of 21 September 2010, *Sweden v API and Commission, API v Commission and Commission v API*, Joined Cases C-514/07P, C-528/07P and C-532/07P, EU:C:2010:541, paragraph 87.

¹⁴ Judgment of the General Court of 15 September 2016, *Philip Morris Ltd v Commission*, T-18/15, EU:T:2016:487, paragraph 73. In the same sense, judgments of the General Court of 26 July 2023, *Troy Chemical Company BV v Commission*, T-662/21, EU:T:2023:442, paragraph 57; and of 24 January 2024, *Veneziana Energia Risorse Idriche Territorio Ambiente Servizi SpA (Veritas) v Commission*, T-602/22, EU:T:2024:26, paragraph 66.

¹⁵ Judgment of the General Court of 7 February 2018, *Access Info Europe v Commission*, T-851/16, EU:T:2018:69, paragraph 72.

Additionally, in Case T-602/22, *Veritas*¹⁶, the General Court reiterated that ‘[t]he exclusion of judicial activities from the scope of the right of access to documents is justified in the light of the need to ensure that, throughout the court proceedings, the exchange of argument by the parties and the deliberations of the court concerned in the case before it take place in an atmosphere of total serenity, without any external pressure on judicial activities’.

In line with the aforementioned case-law, the Secretariat-General considers that there is a real and non-hypothetical risk that the disclosure of the documents requested, reflecting internal consultations and preliminary considerations related to the position adopted in the Commission Decision C(2021)5592 would adversely and seriously affect the protection of court proceedings within the meaning of the second indent of Article 4(2) of Regulation (EC) No 1049/2001. This is the case for as long as Case T-36/23 is ongoing, that is until the competent Court has delivered its final judgment.

Against this background, the Secretariat-General considers that public access to the documents 1, 2, 3, 3.1, 5, 6, 7, 7.1, 8 and 8.1 has to be refused on the basis of the second indent (protection of court proceedings and legal advice) of Article 4(2) of Regulation (EC) No 1049/2001.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Regulation (EC) No 1049/2001 does not include the possibility for the exceptions defined in Article 4(1) to be set aside by an overriding public interest.

However, the exception laid down in the second indent of Article 4(2) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

According to the case-law, the applicant must, on the one hand, demonstrate the existence of a public interest likely to prevail over the reasons justifying the refusal of the documents concerned and, on the other hand, demonstrate precisely in what way disclosure of the documents would contribute to assuring protection of that public interest to the extent that the principle of transparency takes precedence over the protection of the interests which motivated the refusal¹⁷.

¹⁶ Judgment of the General Court of 24 January 2024, *Veneziana Energia Risorse Idriche Territorio Ambiente Servizi SpA (Veritas) v Commission*, T-602/22, EU:T:2024:26, paragraph 67 and case-law cited.

¹⁷ Judgment of the General Court of 9 October 2018, *Anikó Pint v Commission*, T-634/17, EU:T:2018:662, paragraph 48; Judgment of the General Court of 23 January 2017, *Association Justice & Environment, z.s v Commission*, EU:T:2017:18, paragraph 53; Judgment of the General Court of 5 December 2018, *Falcon Technologies International LLC v Commission*, T-875/16, EU:T:2018:877, paragraph 84.

In your confirmatory application, you explain that '[i]t is in the public's interest to understand why exactly there was no disclosure as requested [by the applicant in GESTDEM 2021/2908] in order to determine whether or not the Commission is acting to occult any irregularities in these negotiations [on 'the largest COVID-19 vaccine procurement contract that the Commission entered into']'. Finally, you assert that both you and the applicant in GESTDEM 2021/2908 'are journalists exercising [your] professional duties with a capacity to inform the public'.

In other words, you put forward an alleged public interest in understanding the internal decision-making process leading to the adoption of the reply to the request in GESTDEM 2021/2908 claiming the need, as a journalist, to investigate possible wrongdoings in the award of the COVID-19 vaccine procurement contract.

In the Secretariat-General's view, the above-mentioned considerations do not establish the existence of an overriding public interest in the disclosure of the documents concerned. That is because general considerations such as those mentioned in your confirmatory application cannot provide an appropriate basis for establishing that the principle of transparency was in this case especially pressing and capable, therefore, of prevailing over the reasons justifying the refusal to disclose the documents in question¹⁸.

Effectively, you do not provide any concrete arguments showing why, having regard to the specific facts of the case, a public interest is so pressing that it overrides the need to protect the documents in question. Your arguments in fact do not reflect any particular reason why the need to disclose the aforementioned documents related to the reply to the request in GESTDEM 2021/2908 outweighs the need to preserve the equality of arms and the atmosphere of serenity in the ongoing court proceedings that relate to the same position expressed in a similar reply. On the contrary, in your confirmatory application you 'recognize the Commission's right to not jeopardize its legal defense'. The reference to a journalistic investigation on possible wrongdoings in the COVID-19 procurement process do not represent legitimate reasons for the disclosure to be especially pressing and capable of prevailing over the reasons justifying the non-disclosure.

Moreover, the Secretariat-General has not been able to identify any public interest capable of overriding the interests protected by the second indent of Article 4(2) of Regulation (EC) No 1049/2001. On the contrary, in the Secretariat-General's opinion, the public interest is better served by ensuring the conclusion, in all serenity, of the pending court proceedings, without jeopardising the sound administration of justice in the Case T-36/23.

¹⁸ Judgment of the Court of Justice of 14 November 2013, *Liga para a Protecção da Natureza (LPN) and Republic of Finland v Commission*, Joined Cases C-514/11 P and C-605/11 P, EU:C:2013:738, paragraph 93.

The Secretariat-General concludes therefore that an overriding public interest has not been demonstrated in this particular case. The fact that the document relates to an administrative procedure and not to a legislative act, for which the Court of Justice has acknowledged the existence of wider openness¹⁹, provides further support to this conclusion.

4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, the Secretariat-General has considered the possibility of granting partial access to the documents requested.

No further partial access can be granted to documents 4 and 9 without undermining the interests protected by Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

Furthermore, for the reasons explained above, no meaningful partial access to documents 1, 2, 3, 3.1, 5, 6, 7, 7.1, 8 and 8.1 is possible without undermining the interests described above.

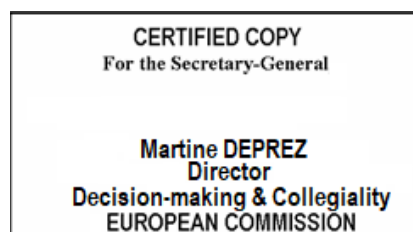
5. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

For the Commission
Ilze JUHANSONE
Secretary-General

Enclosures: 2



¹⁹ Judgment of the Court of Justice of 29 June 2010, *Commission v Technische Glaswerke Ilmenau*, C-139/07, ECLI:EU:C:2010:376, paragraphs 53-55 and 60; Judgment of the Court of Justice of 29 June 2010, *Commission v The Bavarian Lager Co. Ltd*, C-28/08 P, EU:C:2010:378, paragraphs 56-57 and 63.