

EUROPEAN COMMISSION  
Neighbourhood and Enlargement Negotiations

The Director-General

19. 05. 2015

Brussels,

*By registered letter with acknowledgment of receipt*

**Subject: Your application for access to documents – Ref GestDem No 2015/2080**

Dear Mr Dimitrievski,

Thank you for your request received on 2 April 2015, registered on 9 April 2015 under the above mentioned reference number, requesting access to documents under Regulation (EC) No 1049/2001<sup>1</sup> regarding public access to European Parliament, Council and Commission documents.

I furthermore refer to the mail from DG NEAR to you of 30 April 2015 by which you were informed that an extended time limit was needed as other Commission services had been consulted.

The document to which you refer is my letter of 23 March 2015 to Mr Marko Zrlevski, Public Prosecutor, 1000 Skopje.

I regret to inform you that this document is covered by one of the exceptions provided for by Regulation (EC) No 1049/2001 and that it cannot be made available to you. The exception which applies to this document relates to the protection of the public interest as regards international relations under Article 4 (1) (a), third indent of Regulation (EC) No 1049/2001.

The document under question includes sensitive content which is linked to the EU integration process of the former Yugoslav Republic of Macedonia. Its disclosure would pose potential harm to the relations with the former Yugoslav Republic of Macedonia. Please note that we cannot provide you with more detailed information on this document without disclosing its substance which is protected by the exception laid down in Article 4 (1) (a), third indent of Regulation (EC) No 1049/2001.

The document to which you request access forms part of the Commission's on-going dialogue with the former Yugoslav Republic of Macedonia, as part of the international negotiations preceding the potential formal commencement of its accession process to the European Union (EU).

In case T-301/10 *in't Veld v Commission*<sup>2</sup>, the General Court held, at paragraph 120, that "[...] initiating and conducting negotiations in order to conclude an international agreement

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<sup>1</sup> OJ L145, 31.05.2001, page 43.

<sup>2</sup> Case T-301/10, *Sophie in't Veld v European Commission*, General Court, 19 March 2013

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*falls, in principle, within the domain of the executive, and [...] public participation in the procedure relating to the negotiation and the conclusion of an international agreement is necessarily restricted, in view of the legitimate interest in not revealing strategic elements of the negotiations. The Court went on, in paragraph 181, to state that the conduct of negotiations for the conclusion of an international agreement falls, in principle within the domain of the executive".*

I further point your attention to case T-529/09, *in 't Veld v Council*<sup>3</sup>, where the General Court held, at paragraph 24, that where the European institutions are to invoke the exception in Article 4(1)(a), third indent of Regulation 1049/2001, "*[...] the decision to be adopted by an institution pursuant to that provision is of a complex and delicate nature and calls for the exercise of particular care, having regard in particular to the singularly sensitive and essential nature of the protected interest.*" In paragraph 25, the Court stated that "*[...] such a decision calls for a wide margin of discretion[...]*".

Moreover, the Court of First Instance, in the *WWF*<sup>4</sup> judgment, stated that where disclosure of documents would undermine or complicate the EU's negotiation position in international negotiations, access to such documents shall be restricted on the grounds of Article 4(1)(a), third indent, of Regulation 1049/2001.

It follows from the above that in international negotiations, the starting position is one of limited public participation and wide discretion for the European institutions as to whether or not to disclose the documents requested.

Partial access to the requested document was examined and deemed impossible as the sensitive elements are integral to it.

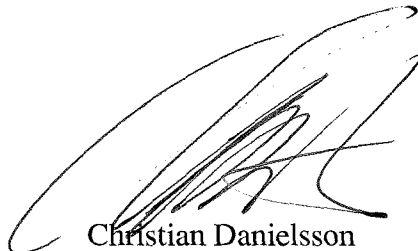
The exception set out in Article 4 (1) (a), third indent of Regulation 1049/2001 is not subject to a public interest test.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review its position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission  
Secretary-General  
Transparency unit SG-B-5  
BERL 5/327  
B-1049 Bruxelles  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Christian Danielsson

<sup>3</sup> Case T 529/09, *Sophie in't Veld v Council of the European Union*, General Court, 4 May 2012

<sup>4</sup> Cf. Case T-264/04, *WWF European Policy Programme v Council of the European Union*, Court of First Instance, 25 April 2007, Paragraph 41