



EUROPEAN COMMISSION
EUROSTAT

The Director-General

Luxembourg,
ESTAT-DG/WR/A5/D(2015)

By registered letter with acknowledgment of receipt

Mr Seán McCarthy
4th Floor, Bishop's Square
Redmond's Hill
Dublin 2
Ireland

Advance copy by email : ask+request-1915-aa757e6e@asktheeu.org

Dear Mr McCarthy,

Subject: Your application for access to documents – Ref GestDem No 2015/2178

We refer to your e-mail dated and registered on 15/04/2015 under the above mentioned reference number and in which you make a request for access to documents.

Your application concerns “all correspondence between Eurostat and Irish government and Irish agencies to include but not limited to the Irish Central Statistics Office and the Department of Environment in relation to the Market Corporation Test for Irish Water.”

In the domain of government finance and Excessive Deficit Procedure (EDP) statistics, Eurostat provides bilateral advice to Member States - when requested - on specific cases. This may be before or after the transactions themselves are undertaken. The advice takes the form of letters addressed to the National Statistical Authorities.

In most cases, the advice given is subsequently published on the Eurostat website. In certain cases of future transactions, where the preparation for the transaction is of a confidential nature, Eurostat does not publish its advice until the transaction is announced by the national authority concerned. The purpose in those cases is to protect the decision-taking procedures at national level and, depending on the case in hand, the commercial interests of the legal persons involved.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that your application cannot be granted, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

The documents which you seek to obtain relate to a matter where the Commission (Eurostat) has not yet communicated its advice on the clarification requested by the Central Statistical Office of Ireland concerning the market Corporation Test for Irish Water.

Disclosure of the documents requested would undermine the purpose of the clarification request launched by the Central Statistics Office of Ireland (CSO); indeed, disclosure of the documents at this point in time would affect the climate of mutual trust between the authorities of the Member State and the Commission (Eurostat), and reveal preliminary assessments. Eurostat must be free to consider all possible options - based on the applicable Union legislation - in preparation of a clarification without external pressure. This is required to enable it to support national authorities in a correct and effective implementation of, in particular, Regulation (EU) No 549/2013 of the European Parliament and of the Council¹. Therefore the exception laid down in Article 4(3) first subparagraph of Regulation (EC) No 1049/2001 applies to these documents.

We have considered whether partial access could be granted to the documents requested but they are entirely covered by the exception.

The exceptions laid down in Article 4(2) and 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. I note that you have not put forward any arguments demonstrating the existence of an overriding public interest in disclosure. Nor have I been able to identify any elements capable of demonstrating that such overriding public interest should exist. Therefore, the protection of the process of providing clarification and advice to the Member States as described above prevails in this case.

Let me point out that Eurostat ensures the widest possible transparency as regards the clarifications provided on the correct implementation of Union legislation concerning government finance and EDP statistics, by way of making the information available on its website. Only in duly justified cases will such publication not take place.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this 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-4
BERL 5/327
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

e-signed

Walter Radermacher

¹ [Regulation \(EU\) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union. \(1\) OJ L 174, 26.6.2013, p. 1–727](#)