



EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels,

Mr Vinzenz Zinser
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BY E-MAIL AND REGISTERED MAIL WITH ACKNOWLEDGMENT OF RECEIPT

Subject: Your request registered on 12 May 2016 under reference GestDem 2016/2658

(Initial request of 16 June 2015 – registered under reference GestDem 2015/3313 - fair solution agreement)

Dear Mr Zinser,

I refer to your request mentioned above for access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹ concerning "*all Legal service documents about Brussels IIa Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000*".

Your request, initially submitted on 16 June 2015, was registered according to the fair solution we agreed upon on 27 July 2015². According to the list annexed to that fair solution, on 20 January 2016 the Legal Service sent the first reply to your request concerning four of the documents of the list³. On 13 April 2016, the Legal Service sent the second reply concerning the first four documents of the list⁴. On 12 May 2016 the Legal Service sent a third reply concerning 8 more documents⁵.

¹ OJ L 145, 31.05.2001, page 43.

² Ares(2015)3146432 - 27/07/2015.

³ Ares(2016)304525 - 20/01/2016.

⁴ Ares(2016)1758688 - 13/04/2016.

⁵ Ares(2016)2232116 - 12/05/2016.

The present reply refers to the last seven documents of the fair solution list mentioned above, corresponding to numbers 13 to 16, 18, 21 and 22, which are the following:

1. Note of the Legal Service to DG JLS of 14 January 2005 (reference JUR(2005)70032).
2. Note of the Legal Service to DG JLS of 6 June 2006 (reference JUR(2006)70529).
3. Note of the Legal Service to DG JLS of 18 October 2006 (reference JUR(2006)70608).
4. Note of the Legal Service to DG JLS of 3 May 2007 (reference JUR(2007)70096).
5. Note of the Legal Service to DG JLS of 15 April 2008 (reference JUR(2008)70050).
6. Note of the Legal Service to DG JLS of 31 May 2010 (reference JUR(2010)70081).
7. Note of the Legal Service to DG HOME of 15 January 2014 (reference Ares(2014)79965 - 15/01/2014).

1. ASSESSMENT

After a concrete assessment of the identified documents, I have come to the conclusion that in accordance with Regulation (EC) No 1049/2001:

- a) Access shall be granted to documents under numbers 1 to 5 and 7, with the exception of the handwritten signatures, the names and the contact details of the officials working for the Commission, since this information is covered by the exception provided for in Article 4(1)(b) ("*protection of personal data*").
- b) Access must be refused concerning document under number 6 (reference JUR(2010)70081), since it is covered by the exceptions provided for in Art. 4(2) second indent (*protection of legal advice*) and 4(3) second subparagraph ("*protection of the decision-making process*").

2. REASONS FOR REFUSAL (DOCUMENT NO. 6)

2.1. Protection of legal advice and of the decision-making process

According to Regulation (EC) No 1049/2001, article 4(2) second indent: "*The institutions shall refuse access to a document where disclosure would undermine the protection of...legal advice...unless there is an overriding public interest in disclosure*".

Also, according to article 4(3) second subparagraph of that Regulation: "*Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure*".

The document under number 6 is a legal opinion of the Commission's Legal Service on the interpretation of Regulation (EC) No 2201/2003 on jurisdiction, recognition and enforcement of matrimonial and parental judgments, commonly known as "Brussels IIa Regulation". It refers more particularly to the cooperation of Member States in the field of the law applicable in divorce and legal separation, issue which is of a particularly sensitive nature. Whilst this legal opinion was drawn up in the context of the adoption of Regulation (EC) No 2201/2003, the legal issues assessed in it are still relevant today. Indeed, currently a draft proposal for a recasting of Brussels IIa Regulation is being prepared within the Commission. A final decision has not yet been taken by the Commission. If and when adopted, this proposal will open a legislative procedure within which the legal issues may be relevant again.

I consider that disclosure of the refused document would, firstly, undermine the protection of legal advice provided for under Article 4(2) second indent of Regulation (EC) N° 1049/2001, which, as recognised by the Court of Justice, must be construed as aiming to protect an institution's interest in seeking legal advice and receiving frank, objective and comprehensive advice⁶. Indeed, as set out above, even though the legal opinion was drafted in the framework of the adoption of Regulation (EC) No 2201/2003, its analysis is still relevant and likely to become subject of discussion in the forthcoming discussions on a recast of that Regulation.

Under these circumstances, disclosure of the requested document at this stage would have adverse consequences both for the Legal Service's capacity to assist the Commission and its services in this matter and for the Commission's ability to seek legal advice and receive frank, objective and comprehensive advice, depriving, thus, the Commission of an essential element in the framework of the adoption of sound decisions.

Secondly, disclosure of the document would also prejudice the Commission's internal decision-making process. Putting the document in the public domain at this point of time, before the Commission has taken a final decision on the proposal for a recasting of Brussels IIa Regulation, would severely reduce the Commission's capacity to reach a decision after frank and unbiased internal discussion and, thus, would seriously affect its decision –making process.

2.2. Possibility of granting partial access

As laid down in Article 4(6) of Regulation (EC) No 1049/2001, I have considered the possibility of giving partial access to the requested documents. However, after a careful examination of the documents concerned I have come to the conclusion that they are entirely covered by the invoked exceptions so that a partial disclosure is not possible.

Therefore, in view of the pending discussion concerning Brussels IIa, any kind of disclosure, full or partial, of the particular legal opinion must be refused at this stage.

⁶ Judgment of 1 July 2008 in *Sweden and Turco v Council*, C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 42.

2.3. Overriding public interest in disclosure

Pursuant to Article 4(2) of Regulation 1049/2001, the exception to the right of access must be waived if there is an overriding public interest in disclosing the requested document. In order for an overriding public interest in disclosure to exist, this interest, firstly, has to be public and, secondly, overriding, i.e. in this case it must outweigh the interest protected under Articles 4(2), second indent and 4(3) second subparagraph. In the present case, I see no elements capable of showing the existence of an overriding public interest in disclosure of the refused document that would outweigh the public interest in the protection of legal advice and of the decision-making process.

3. PARTIAL ACCESS (DOCUMENTS NO 1-5, 7)

3.1. Protection of personal data

According to Regulation (EC) No 1049/2001, Article 4(1)(b): *"The institutions shall refuse access to a document where disclosure would undermine the protection of: [...] (b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data"*.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable⁷. In accordance with the exception provided for in Article 4(1)(b) ("*protection of personal data*") of Regulation (EC) No 1049/2001 the names, initials of the names, work addresses, telephone numbers and e-mail addresses of the staff members not having the function of senior management staff at the Commission, as well as the handwritten signatures have been removed from the requested documents.

According to Article 8(b) of that Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced. Those two conditions are cumulative.

I consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Accordingly, the requested documents are disclosed expunged from the personal data.

If you wish to receive the expunged personal data, I invite you to provide us with arguments showing the need to have the personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data would be disclosed.

Please note that the exception of Article 4(1)(b) of Regulation (EC) No 1049/2001 has an absolute character and does not envisage the possibility of demonstrating the existence of an overriding public interest.

Should you disagree with the assessment that the expunged information is personal data which can only be disclosed if such disclosure is legitimate under the rules of personal

⁷ Judgment in *European Commission v The Bavarian Lager Co. Ltd.*, C-28/08 P, EU:C:2010:378.

data protection, you are entitled to make a confirmatory application requesting that the Commission review this position in accordance with the provisions and rules set out below.

3.2. Reuse of the partially disclosed documents

You may reuse the documents disclosed to you free of charge for non-commercial and commercial purposes, provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

4. MEANS OF REDRESS

Should you wish this position to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretary-General at the address below.

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

The Secretary General will inform you of the result of this review within 15 working days from the date of registration of your request. You will either be given access or your request will be rejected in which case you will be informed on how you can take further action.

Yours sincerely,



Luis ROMERO REQUENA

Attachments: 6