



Brussels,

By e-mail

Mr Vinzenz Zinser

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Subject: Request for access to documents GestDem 2015/3313

Ref.: 1) Your request of 16 June 2015, registered under GESTDEM 2015/3313
2) Our email of 9 July 2015 (Ares(2015)2896408) providing a partial reply to your request on how to find public information on the EU server Europa
3) Our email of 27 July 2015 (Ares(2015)3146432) proposing a fair solution in application of Regulation 1049/2001 article 6 (3)
4) Your reply of 11 August establishing a first order of treatment

Dear Mr Zinser,

I refer to your request mentioned above by which you ask for access to documents under Regulation (EC) N° 1049/2001¹ 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*"

In our email exchanges following your initial request we agreed on a fair solution: we deal with your huge request in bundles of four documents. In your email of 11 August you asked us to start our assessment with the following four documents:

1. Proposal for a Council regulation amending regulation EC/2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters - consequences of the decision of UK and Ireland not to participate in the adoption of the Rome III Proposal (JUR(2008)072673)
2. Signature de la Convention du Conseil d'Europe sur les relations personnelles de l'enfant du 15 Mai 2003 (JUR(2008)050253)
3. Proposal for a Council regulation on negotiation and conclusion of agreements between Member States and third countries covering jurisdiction, recognition and enforcement of judgments and decisions in matters relating to family law, including

¹ Regulation (EC) N° 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (Official Journal L 145, 31.05.2001, page 43).

maintenance obligations, and applicable law in matters relating to maintenance obligations (JUR(2008)070238)

4. Answer from the Legal Service to the consultation on Bruxelles II bis – Report Ares(2014)643529

1. ASSESSMENT

After a concrete assessment of the documents, I am pleased to inform you that, in accordance with Regulation 1049/2001, full access can be granted to documents number 2, 3 and 4 with the exception of the handwritten signature and the names of officials other than Commissioners and their cabinet members and staff in senior management positions, since this information is covered by the exception provided for in Article 4(1)(b) ("protection of personal data")² of Regulation 1049/2001.

Therefore you find enclosed copies of the three documents. You may reuse this document 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 document. Please note that the Commission does not assume liability stemming from the reuse.

As regards document number 1, I have come to the conclusion that partial access can be granted to it as one paragraph is covered by the exception provided for in Article 4(2) second indent ("*the protection of legal advice*")³ of Regulation 1049/2001. As to personal data contained in this document, the same redaction is operated as for documents number 2, 3 and 4.

2. PROTECTION OF PERSONAL DATA

The requested documents contain personal data. In accordance with the exception provided for in Article 4(1)(b) ("protection of personal data") of Regulation 1049/2001 the names, initials of the names, work address, telephone number and e-mail address of the staff members not having the function of senior management staff at the Commission as well as the handwritten signature have been blanked out.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable⁴.

According to Article 8(b) of this 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.

² *"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".*

³ *"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".*

⁴ Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

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 this 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 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 data is personal data which can only be disclosed if such disclosure is legitimate under the rules of personal 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 at the end of this letter.

3. PROTECTION OF LEGAL ADVICE

Document number 1 is an opinion of the Legal service on the proposal of regulation "Rom III". The legal advice specially addresses the role of the United Kingdom and Ireland which are free to opt in legal acts in the area of civil liberties, justice and home affairs. The paragraph which is protected by the exception puts forward a sensitive question which is still relevant today and subject of discussion.

I consider that full disclosure of this document would undermine the protection of legal advice provided for under Article 4(2) second indent of Regulation 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 advice⁵. Indeed, full disclosure of the Legal Service opinion would put in the public domain internal discussions on a sensitive legal question which is still subject of discussion even after the adoption of the Rom III regulation. Therefore, I consider that this paragraph cannot be released.

Accordingly, please find attached an expunged version of document number 1.

4. OVERRIDING PUBLIC INTEREST

Pursuant to Article 4(2) and (3) of Regulation 1049/2001, the exceptions to the right of access must be waived if there is an overriding public interest in disclosing the requested documents. I understand the interest of transparency in that it enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system.

⁵ C-39/05 P and C-52/05 P Kingdom of Sweden and Maurizio Turco v Council of the European Union, [2008] ECR p. I-4723, at para. 42.

However, in the present case, for the reasons explained above, I consider that the interest in transparency does not outweigh the public interest of the Commission and its services to receive frank, objective and comprehensive legal advice and the need to protect that institution's decision-making process. Furthermore, I have not been able to identify any public interest capable of overriding the interests protected by Article 4(2) second indent and (3) first subparagraph of Regulation 1049/2001.

5. MEANS OF REDRESS

In case you disagree with this assessment you can make a confirmatory application 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 sincerely,

A handwritten signature in black ink, appearing to read 'Luis Romero Requena', with a stylized, cursive script.

Luis ROMERO REQUENA

Enclosures: 4 documents in their expunged version