



EUROPEAN COMMISSION

DIRECTORATE-GENERAL
ENVIRONMENT

The Director-General

Ref. Ares(2016)2371852 - 23/05/2016

Brussels, 20/05/2016
ENV/C3/SB/pb (2016) 2656039

Mr Vincent Harmsen

**By registered letter
with acknowledgment of receipt**

ask+request-2697cdd243cf@asktheeu.org

**Subject: Your applications for access to documents – Ref GestDem No 2016/1423,
2016/1436, 2016/1457 and 2016/1458**

Dear Mr Harmsen,

We refer to your emails dated 18 and 21 March 2016 in which you make a request for access to documents, registered under the above mentioned reference numbers, respectively.

You requested access to *"all correspondence (including emails), agendas, working documents, minutes of meetings and any other reports of such meetings of the inter-service consultation on the Proposal for a Directive of the European Parliament and of the Council on the reduction of national emissions of certain atmospheric pollutants (between May 2013 and January 2014)."*

Your application concerns views and opinions for internal use as part of deliberations and preliminary consultations within the Commission. It is true that the proposal for a Directive on the reduction of emissions of certain atmospheric pollutants was adopted by the Commission (COM/2013/920 final). However, the legislative procedure (i.e. the inter-institutional decision-making process) is not yet finalised and the act finally adopted by the Union legislators (the European Parliament and the Council).

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 accepted, as disclosure is prevented by exception to the right of access laid down in Article 4 (3), second subparagraph of this Regulation.

Disclosure of the documents requested would seriously undermine the Commission's position in the ongoing inter-institutional negotiations with the European Parliament and the Council, as it would reveal preliminary views and discussions from the preparatory phase. It would thus unduly expose the Commission's deliberative process, including the disclosure of policy options which were considered but not retained in the final version of the proposal adopted by the Commission and could be examined in the framework of the legislative process.

Therefore the exception laid down in Article 4(3) second subparagraph of Regulation (EC) No 1049/2001 applies to these documents.¹

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

I am aware of the fact that you received from the Secretariat General its contribution to the inter-service consultation. Nevertheless, the current application covers a much broader scope, involving a far wider range of preliminary views and discussions from the preparatory phase. The ongoing inter-institutional negotiations have entered a particularly sensitive stage where the disclosure of such views and discussions, without the provision of due context and where the time for adequate reflection on the arguments and counterarguments will not be available, could substantially prejudice the ongoing legislative procedure and the role which the Commission is called upon to carry out for the adoption of the act. For that reason a different approach must be taken here.

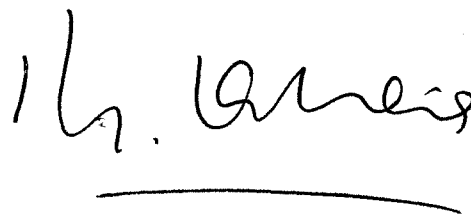
The exception laid down in Article 4(3) of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the documents. We have examined whether there could be an overriding public interest in disclosure, but we could not identify such interest in this case.

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 5/282
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Daniel Calleja

¹ Article 4(3) second subparagraph : *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.*