



EUROPEAN COMMISSION

Competition DG

Director General

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Subject: Request for access to documents, GESTDEM reference 2016/3747

Dear Mr Grasso,

I would like to refer to your request of 4 July 2016, by which you requested access to documents related to the Commission investigations regarding Spanish football clubs.

1. DOCUMENTS CONCERNED

You request copies of all letters and documents sent by the Spanish authorities to the Commission relating to State aid cases SA.29769, SA.33754 and SA.36387.

2. BACKGROUND

The documents you request access to are all part of the state aid file in the cases mentioned above, concerning an investigation under Article 107/108 of the Treaty, which is still on-going.

Having carefully examined your application in the light of Regulation 1049/2001, I have come to the conclusion that the requested documents fall under the exceptions of Article 4 of that Regulation. I therefore have to reject your request to these documents for the reasons below.

3. APPLICABLE EXCEPTION

The documents you request access to are part of an ongoing investigation under Article 108 TFEU. The decisions taken by the Commission on 4 July 2016 are still open to review by the European Courts which may lead to a re-opening of the investigations.

Please specify the name of the case and the case number in all correspondence.

Pursuant to Article 4 (2), third indent, of Regulation 1049/2001 the Commission shall refuse access to a document where its disclosure would undermine the protection of the purpose of inspections, investigations and audits.

This exception aims at protecting the Commission's capacity to ensure that Member States and other third parties comply with their obligations under Community law.

As the Court of Justice has ruled in case *Commission v TGI*¹ there exists, with regard to Article 4(2), third indent, of Regulation 1049/2001, a general presumption that disclosure of documents in the administrative files in State aid procedures in principle undermines the protection of the purpose of investigations. The Court reasoned that this follows from the fact that under the State aid procedural rules the interested parties, other than the Member State concerned, have no right to consult the documents in the administrative file and should such access be granted under Regulation 1049/2001 the nature of the procedure is likely to be modified and thus the system for review of State aid would be called into question.

The documents to which you request access are part of the State aid file in the ongoing State aid procedure mentioned above. Thus, in accordance with the *Commission v TGI* case law, the requested documents are covered by the above presumption unless the applicant demonstrates otherwise. In your letter you have not demonstrated that certain documents are not covered by the general presumption.

Moreover, the procedures at hand are based on an investigation of the Commission which must be carried out in co-operation with the national authorities. Disclosure of the exchanges between the Commission and the national authorities could prejudice this cooperation and thus undermine the purpose of the Commission's investigation.

In view of the above I consider that the documents requested are manifestly covered by the exception related to the protection of the purpose of investigations.

4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Pursuant to Article 4(2) of Regulation 1049/2001, and according to the *Commission v TGI*² case law, the general presumption that access to the requested documents would undermine the purpose of investigations may be superseded by an overriding public interest in disclosure. Furthermore, an overriding public interest must be objective and general in nature and must not be indistinguishable from individual or private interests.

In your application, you have not put forward any arguments leading to identify an overriding public interest in disclosure. The Commission has not itself identified such overriding public interest. Consequently, the prevailing interest in this case rather lies in protecting the effectiveness of the Commission's State aid investigation.

¹ Case C-139/07 P *Commission v TGI* paragraph 61.

² Case 139/08 P *TGI v Commission*.

5. MEANS OF REDRESS

If you want this position to be reviewed you should write to the Commission's Secretary-General at the address below, confirming your initial request. You have 15 working days in which to do so from receipt of this letter, after which your initial request will be deemed to have been withdrawn.

The Secretary-General will inform you of the result of this review within 15 working days from the registration of your request, either granting you access to the document or confirming the refusal. In the latter case, you will be informed of how you can take further action.

All correspondence should be sent to the following address:

European Commission
Secretary-General
Transparency unit
BERL 5/327
B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,



Johannes LAITENBERGER

