



EUROPEAN COMMISSION
DIRECTORATE GENERAL
ECONOMIC AND FINANCIAL AFFAIRS
The Director General

DG ECFIN

24-04-2013

ares 824331

Brussels,

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**Subject: Access to information request – DG ECFIN contacts with Clifford
Chance - Ref GestDem No 0594/2013
Your request dated 6 February 2013 sent by e-mail**

We refer to your e-mail dated 8 February 2013 in which you specified your request of 6 February 2013 for access to documents, registered under the above mentioned reference number.

Your application concerns the correspondence between staff of DG ECFIN and branches of Clifford Chance in Brussels, Paris and London from February 2012 to February 2013.

Following our initial reply on 5 March 2013 stating that we did not find documents that would correspond to your request, we conducted additional searches of relevant documents.

Consequently, DG ECFIN has identified 3 documents in relation to exchanges between DG ECFIN and Clifford Chance that fulfil the criteria of your request. These documents are:

1. e-mail DG ECFIN to Clifford Chance of 8.2.2012 at 14:51
2. e-mail Clifford Chance to DG ECFIN of 9.2.2012 at 14:24
3. e-mail Clifford Chance to DG ECFIN of 16.2.2012 at 00:13

All these documents have been exchanged in the framework of a request for legal advice by the Commission to Clifford Chance. They relate to legal advice given by Clifford Chance to the Commission in the context of the management of the Greek debt and in the broader context of the different measures of financial assistance taken in favour of Greece.

Following an examination of 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.

A. DG ECFIN has to refuse access to these documents, firstly, on the basis of Art. 4.1(a), 4th indent of Regulation 1049/2001 according to which *[T]he institutions shall refuse access to a document where disclosure would undermine the protection of (a) the public interest as regards [...] the financial, monetary or economic policy of the Community or a Member State*".

Disclosure of the concerned documents would certainly undermine the protection of the financial and economic policy of the Union and of Greece for the following reasons:

The management of the Greek debt and the financial assistance to Greece both form part of an on-going process of confidential negotiations between the concerned Member State, the other euro area Member States, the IMF, the ECB, private lenders and the Commission. The internal assessment made by the Commission with the assistance of Clifford Chance on the feasibility, advantages and disadvantages of the different legal options that are available in this context is a key element for the establishment of the Commission's positions in this negotiation process. Its public disclosure would thus considerably weaken the possibility for the Commission to fulfil its tasks related to the financial, monetary or economic policy of the Union and its Member States. Moreover, its public disclosure could be highly detrimental to the financial situation of both the Union and Greece. Indeed, it could result in adverse market reactions that would be detrimental to Greece, the Euro area and the Union. The stability of the financial markets remains fragile, in particular, because of the economic and financial situation of the Hellenic Republic. Such development could have the potential of leading to negative spillover effects on the solvency and funding conditions of other issuers and countries in the euro area.

B. Secondly, DG ECFIN has to refuse access to the concerned documents on the basis of the exception provided for under Article 4.2, second indent of the Regulation according to which *[T]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] legal advice*.

As stated above, the concerned documents contain legal advice provided by Clifford Chance. This legal advice concerns a highly sensitive matter. Their disclosure would certainly undermine the Commission's interest in seeking legal advice and receiving frank, objective and comprehensive advice¹. Indeed, in addition to the harm caused to the financial and economic policy indicated above, public disclosure of these documents would also affect the Commission's negotiation position vis-à-vis the Greek authorities on the matter concerned but also with regard to other Member States in the context of the management of their financial assistance programs. Should the Commission and its services be obliged to disclose the requested documents, it would in the future refrain from seeking legal advice on such sensitive matters.

¹ Joined Cases C-39/05 P and C-52/05 P, *Sweden and Turco v Council*, ECR 2008, p. I-4723, at para. 42

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 documents. DG ECFIN does not see any elements that would show the existence of a public interest that would outweigh the harm disclosure would cause to the interest protected by the invoked exception..

In this regards, it has to be stressed that both invoked exceptions are closely intertwined. In this situation and for the reasons explained above, DG ECFIN considers 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.

Should you wish this position to be reconsidered, you should present in writing, within 15 working days from receipt of this letter, a confirmatory application to the Commission's Secretary-General at the address below.

The Secretary-General will inform you of the result of such review within 15 working days from the date of registration of your request. You will either be given access to the document or your request will be rejected, in which case you will be informed of what further action is open to you.

All correspondence should be sent to the following address:

The Secretary-General
European Commission
Unit SG.DSG1.B.5 Transparency - Access to documents
BERL 5/331
B-1049 BRUSSELS
e-mail: Sg-Acc-Doc@ec.europa.eu

Yours sincerely,



Marco Buti

