



THE EUROPEAN COMMISSION  
DIRECTORATE-GENERAL ENVIRONMENT

Director-general

Brussels, **13 MAI 2019**  
ENV/E.2/MV/ap/Ares(2019)

Platform Investico  
Mrs. Karlijn Kuijpers  
WG-Plein 105  
1054 SC Amsterdam  
The Netherlands

*By registered letter with  
acknowledgment of receipt*

*Advance copy by e-mail:*

[ask+request-6877-  
e5a80d12@asktheeu.org](mailto:ask+request-6877-e5a80d12@asktheeu.org)

**Subject: Your application for access to documents**

**Reference: GestDem N° 2019/2663**

Dear Mrs. Kuijpers,

I refer to your request for access to documents of 7 May 2018, registered under the above-mentioned reference number.

In your application, you requested all *"emails, letters, memos, or any document or information related to the infringement procedure against the Netherlands concerning the non-compliance of its Environmental Impact Assessment (EIA) legislation with the new European norms (the EIA Directive, Directive 2011/92/EU), including, but not limited to:*

- letter of formal notice*
- response from the Dutch government*

*That is, I request any document or information that relates to the process, even though the document does not refer directly to infringement procedure."*

Having examined your request in compliance with the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that as the documents requested are related to an on-going infringement procedure 2019/2023 sent to the Dutch authorities on 8 March 2019, they are covered by one of the exceptions provided

for by the policy relating to access to documents and that they cannot be made available to you.

The exception which applies to the document you have requested is that under Article 4(2) third indent of Regulation 1049/2001 which lays down that the institutions shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.

In the matter of investigations of alleged infringements, sincere co-operation and a climate of mutual confidence between the Commission and the Member State concerned are required to allow both parties to engage in a process of negotiation and compromise with the search for a settlement of a dispute without bringing it before the Court of Justice. The safeguarding of this objective warrants the refusal of access to the document you requested.

This has been confirmed by the jurisprudence of the Court of First Instance. In its judgement of 11 December 2001 in the case T-191/99 the Court held that *"the Member States are entitled to expect the Commission to guarantee confidentiality during investigations which might lead to an infringement procedure. This requirement of confidentiality remains even after the matter has been brought before the Court of Justice, on the ground that it cannot be ruled out that the discussions between the Commission and the Member State in question regarding the latter's voluntary compliance with the Treaty requirements may continue during the court proceedings and up to the delivery of the judgement of the Court of Justice. The preservation of that objective, namely an amicable resolution of the dispute between the Commission and the Member State concerned before the Court of Justice has delivered judgment, justifies refusal of access to the letters of formal notice and reasoned opinions drawn up in connection with the Article 226 EC proceedings on the ground of protection of the public interest relating to inspections, investigations and court proceedings"*.

In addition, in its judgement of 14 November 2013 in joint cases C-514/11 P and C-605/11 P (paragraph 63), the Court held that: *"the disclosure of the documents concerning an infringement procedure during its pre-litigation stage would, in addition, be likely to change the nature and progress of that procedure, given that, in those circumstances, it could prove even more difficult to begin a process of negotiation and to reach an agreement between the Commission and the Member State concerned putting an end to the infringement alleged, in order to enable European Union law to be respected and to avoid legal proceedings"*.

Having carefully examined your request in the light of Article 4(2) of Regulation 1049/2001, I have been unable to identify in this particular case the existence of an overriding public interest which could justify the disclosure of the requested documents. I also note that you have not put forward any arguments demonstrating the existence of a public interest capable of overriding the public interest protected by Article 4(2) of Regulation No 1049/2001.

I have also examined the possibility of granting partial access to the requested documents, in accordance with Article 4(6) of Regulation 1049/2001. However, partial access is not possible considering that the documents concerned are at the stage of investigation proceedings covered in its entirety by the exception under Article 4 (2), third indent.

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 Brussels  
BELGIUM  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'D. Calleja', written over a horizontal line.

Daniel Calleja

