



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS

The Director-General

Brussels
HOME.D.4/AP

By registered letter with acknowledgment of receipt

Mr Patrick Breyer
60 rue Wiertz
1047 Brussels

Advance copy by email: ask+request-9125-4aff6af2@asktheeu.org

Subject: Your application for access to documents – Ref GestDem No 2021/1074

Dear Mr Breyer,

We refer to your e-mail of 23 February 2021 in which you make a request for access to documents, registered on 25 February 2021 under the above-mentioned reference number.

You request access to all legal opinions/assessments of the various DGs regarding the so-called ePrivacy derogation that was eventually proposed by the Commission (COM(2020) 568 final).

Your present application concerns 3 (three) documents, falling within the scope of this application:

1. Message from DG HOME, Director for Law Enforcement and Security, to DG CNECT, Acting Director Digital Society, Trust and Cybersecurity, 4 August 2020, Ares(2021)688685
2. Report from inter-service consultation meeting on 2 September 2020, Ares(2021)1377486
3. Written comments submitted to the inter-service consultation by DG JUST, 2 September 2020, Ares(2020)4559223

Partial access

Having examined document 2 requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that it may be partially disclosed.

In the first place, a complete disclosure of the report is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of

Regulation (EC) No 1049/2001, because it contains the names/initials and contact information of Commission staff members not pertaining to the senior management.

In the second place, the annex of the report has been blanked because it contains positions of the Commission's services on the content of the draft Regulation.

The disclosure of services' positions is prevented by exceptions to the right of access laid down, firstly, in Article 4(2) second indent and, secondly, in Article 4(3) first subparagraph of Regulation (EC) No 1049/2001.

Firstly, the positions relate to legal advice from the Commission's services on the draft Regulation.

I consider that disclosure of this information would undermine the protection which must be afforded to this advice and would be harmful to the Commission's interest in seeking input from the perspectives of various policy objectives and receiving frank, objective and comprehensive advice.

The Commission's services must be free to explore all possible options in preparation of a decision free from external pressure, in particular in a sensitive area. The possibility of expressing views independently and to gather information with a view to contributing to the smooth running of the decision-making process justify a protection of the advice and input.

Therefore, the exception laid down in Article 4(2) second indent, of Regulation (EC) No 1049/2001 applies to this document.

Secondly, disclosure of the document requested would also undermine the decision-making process at EU level as it would reveal preliminary views and policy options, including ones that are not fully reflected in the final Commission position. The Commission services have to consider policy options from all angles, taking into account differing and sometimes even contradictory priorities, and reconciling them in the final Commission position. Revealing all the views that were considered in the process would undermine the carefully balanced final Commission position, which is currently under consideration in the context of the ongoing negotiations at interinstitutional level. Disclosure of such exchanges of information and views of Commission services would seriously undermine the institutions' decision-making process, as it would deter staff from making such remarks independently and without being influenced by the prospect of wide disclosure exposing the institution and services to which the civil servants belong.

Therefore, the exception laid down in Article 4(3) first subparagraph, of Regulation (EC) No 1049/2001 applies to this document.

The exceptions laid down in Articles 4(2) and (3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the document.

I observe that you have not provided any arguments to support any pressing need for the public to obtain access to the entirety to the document. I have also examined whether there could be an overriding public interest in disclosure, but I have not been able to identify such an interest, for the same reasons as above explained.

Refusal

Having examined documents 1 and 3 requested under the provisions of Regulation (EC) No 1049/2001, I regret to inform you that access cannot be granted, as disclosure is prevented by exception to the right of access laid down in Article 4(2) second indent and Article 4(3) first subparagraph of this Regulation.

In the first place, the documents which you seek to obtain contain analysis in legal terms of the possible ways forward regarding the interim legislative measure.

These documents relate to legal advice. For similar reasons as explained above for document 2, disclosure of the documents requested would undermine the protection of legal advice contained in these documents.

Therefore, the exception laid down in Article 4(2) second indent, of Regulation (EC) No 1049/2001 applies to these documents.

In the second place, for similar reasons as explained above for document 2, disclosure of the documents requested would undermine the institution's decision-making process.

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

The exceptions laid down in Articles 4(2) and (3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the document.

I observe that you have not provided any arguments to support any pressing need for the public to obtain access to the documents. I have also examined whether there could be an overriding public interest in disclosure, but I have not been able to identify such an interest, for the same reasons as above explained.

I have considered whether partial access could be granted to these documents. However, my assessment is that it is not possible to grant access to expunged version of the documents, as the remaining parts after expunging the confidential information might be meaningless or illegible.

In accordance with Article 7(2) of Regulation (EC) No 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
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

(e-signed)
Monique PARIAT

