



EUROPEAN COMMISSION
LEGAL SERVICE

The Director General

Brussels, 09. 01. 2014

By E-mail:

Mr Akis Nastas
ask+request-1017-
c15282bd@asktheeu.org

Subject: Your request for access to documents

Ref.: Your email of 15 November 2013, registered under reference GESTDEM 2013/5717

Dear Mr Nastas,

I refer to your e-mail mentioned above requesting access, under Regulation (EC) N° 1049/2001¹, to the list of the annexes attached to the documents submitted by the European Commission to the Court, where such list includes a reference to an audit report drawn up by either the Research DG or their external audit firm, in the following cases :

- T-116/11 *Association médicale européenne (EMA) v European Commission*
- T-59/11 *Isotis v Commission*
- T-312/10 *ELE.SIA v Commission*
- T-286/10 *Fondation IDIAP v Commission*
- T-252/10 *Cross Czech v Commission*
- T-170/08 *Commission v I.D. FOS Research*
- T-444/07 *CPEM v Commission*
- T-179/06 *Commission v Burie Onderzoek en Advies*
- T-74/05 *International Institute for the Urban Environment v Commission*

1. Cases T-116/11, T-286/10, T-444/07, T-179/06 (reply) and T-74/05 (defence)

In your request, you precise that *the application concerns the release of the pages with the list of the annexes of the 'main' legal documents, where the list includes an audit report drawn up by either the Research DGs or their external contractors – audit firms.*

Please note that the following documents won't be disclosed since the list of annexes attached to these documents does not contain any reference to an audit report:

¹ Regulation (EC) N° 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.05.2001, page 43).

- case T-116/11 :
 - Commission's defence (document with reference Ares(2011)578491);
 - Commission's rejoinder (document with reference Ares(2011)972835);
- case T-286/10:
 - Commission's defence (document with reference Ares(2010)3117);
 - Commission's rejoinder (document with reference Ares(2011)26308);
- case T-444/07:
 - Commission's defence (document with reference Ares(2010)3034);
- case T-179/06:
 - Commission's reply (document with reference JURM(06)3159);
- case T-74/05:
 - Commission's defence, which become plea of inadmissibility (document with reference JURM(05)3056).

2. Cases T-252/10 and T-312/10 (Commission's rejoinder)

No annexes have been attached to:

- the Commission's objection of inadmissibility (document with reference JURM(2010)3108) in case T-252/10;
- the Commission's rejoinder (document with reference Ares(2011)167287) in case T-312/10.

3. Cases T-59/11 and T-170/08

First, I would like to draw your attention on the fact that, contrary to what you mention in your request, the list of annexes together with the annexes themselves are integral part of the documents lodged by the Commission to the Court. As such, the pages you request follow the same rule concerning the access to the main document.

In the present case, since cases T-59/11 and T-170/08 are still pending before the General Court, I regret to inform you that the list of annexes you request, being integral part of the Commission's submissions, are covered by the exceptions foreseen in Article 4(2) second indent ("*protection of court proceedings*").

Article 4(2) second indent of Regulation 1049/2001 states by way of exception that "*[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] court proceedings [...] unless there is an overriding public interest in disclosure*".

As a consequence, the list of annexes cannot be made available to you.

The purpose of the exception "*protection of court proceedings*" is to maintain the independence of the EU institutions in their dealings with the Court and to ensure the proper course of justice. In this regard, the Court of Justice has stated in its judgment in joined cases C-514/07P, C-528/07P and C-532/07P that the pleadings lodged before the Court of Justice in court proceedings are wholly specific since they are inherently part of the judicial activities of the Court and that these activities are as such excluded from the scope of the right of access to documents without any distinction being drawn between the various procedural stages, in the light of the need to ensure that, throughout the court

proceedings, the exchange of arguments by the parties and the deliberations of the Court in the case before it take place in an atmosphere of total serenity².

In addition, the Court has recognized that *"[i]t is therefore appropriate to allow a general presumption that disclosure of the pleadings lodged by one of the institutions in court proceedings would undermine the protection of those proceedings, [...], while those proceedings remain pending"*³.

Consequently, since cases T-59/11 and T-170/08 are still ongoing cases, I consider that the list of annexes attached to the Commission's written submissions are clearly covered by the exception provided for in Article 4(2) second indent of the above mentioned Regulation and, consequently, cannot be disclosed at this stage of the proceedings.

4. Cases T-74/05 (Commission's defence) and T-179/06 (Commission's application)

After a concrete assessment of the Commission's application in case T-74/05 (document with JURM(05)3057) and of the Commission's defence in T-179/06 (document with JURM(06)3102), I am pleased to inform you that full access can be granted to them, a copy of which you will find enclosed, respectively, in English and in Dutch, the languages of the proceedings.

I must however remind you that these documents cannot be reproduced or disseminated for commercial purposes without prior consent given by the Commission.

5. Case T-312/10 (Commission's reply)

The list of annexes attached to the Commission's reply (document with reference Ares(2010)772944) contains a reference to an audit report.

After a concrete assessment of this document, I am pleased to inform you that full access can be granted to it, with the exception of the following information:

- the names of ELE.SI.A's staff members mentioned in annexes B.VII. and B.XIX., and of IARD foundation's staff member mentioned in annexes B.XX. and B.XXV. which are covered by the exception provided for in Article 4(1)(b) (*"protection of personal data"*)⁴ of Regulation 1049/2001;
- the date of the act and the project name mentioned in annex B.XXVI. which are covered by the exception provided for in Article 4(2) first indent of Regulation 1049/2001 (*"protection of commercial interests"*)⁵.

Disclosure of the names of the abovementioned staff members would undermine the legitimate privacy rights of the concerned person and, therefore, would be contrary to Article 4(1)(b) of Regulation 1049/2001. Indeed, according to Article 8(b) of Regulation No. 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the

² Judgment of the Court of 21 September 2010 in joined cases C-514/07P, C-528/07P and C-532/07P Sweden v API and Commission, API v Commission and Commission v API (paragraphs 77, 79 and 92), European Court reports 2010, Page I-08533.

³ Paragraph 94.

⁴ *"The institutions shall refuse access to a document where disclosure would undermine the protection of: [...] (b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data"*.

⁵ *"The institutions shall refuse access to a document where disclosure would undermine the protection of: – commercial interests of a natural or legal person [...] unless there is an overriding public interest in disclosure"*.

Community institutions and bodies and on the free movement of such data⁶, personal data shall only be transferred to recipients if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced. You have not provided any express and legitimate justification or any convincing argument in order to demonstrate the necessity for those personal data to be transferred⁷.

Disclosure of the date and project name mentioned in annex B.XXVI., which have not been made public by the Judgment of the General Court of 2 October 2012, could put at danger the reputation of the companies mentioned in the Commission's reply, thus harming their commercial interests.

Accordingly, you will find enclosed a copy of the expunged version of the requested document in Italian, the language of the proceedings.

Please note that this document cannot be reproduced or disseminated for commercial purposes without prior consent given by the Commission.

6. Means of redress

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 document. In order for an overriding public interest in disclosure to exist, this interest, firstly, has to be public and, secondly, overriding, i.e. in this case it must outweigh the interest protected under Article 4(2), second indent. In the present case, I see no elements capable of showing the existence of an overriding public interest in disclosure of the refused document that would outweigh the public interest in the protection of the court proceedings.

Should you wish this position to be reconsidered, you should present in writing, within fifteen 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 this review within 15 working days from the date of registration of your request. You will either be given access or your request will be rejected in which case you will be informed of how you can take further action.

All correspondence should be sent to the following address:

The Secretary General
European Commission
B-1049 BRUSSELS
Sg-Acc-Doc@ec.europa.eu

Yours sincerely,



Luis ROMERO REQUENA

Enclosures: 3

⁶ OJ L 8, 12.01.2001, page 1.

⁷ Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, European Commission v The Bavarian Lager Co. Ltd (paragraphs 77-78), European Court reports 2010 page I-06051.