Dear Secretariat-General,

I am filing the following confirmatory application with regards to my access to documents requests GESTDEM 2022/0753, 2022/0754, 2022/0755, 2022/0756, 2022/0757.

On February 3, 2022, I had requested the following:

> *"All documents related to the state of transposition of the Anti-money laundering directives IV and V" for Cyprus, Denmark, Hungary, Italy and Lithuania, "especially those concerning the EU's assessments of these transpositions and any potential reaction taken to it, including discussions of potential or actual infringement procedures."*

On March 2, 2022, you denied my request, stating that partial access could not be granted either.

I would like to ask you to reconsider your decision for the following reasons:

- **The harm test under Article 4(2) third indent has not been explicitly proven**

You based your refusal to disclose the documents I had request on the exception laid down in Article 4(2) third indent of Regulation 1049/2001. According to this, requests shall be refused

> *"where disclosure would undermine the protection of […] the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure."*

You stated that the refusal of my request

> *"is based on the negative effects that the disclosure would have on the conduct of investigations by the Commission in the framework of the assessment of the implementation and effective application of the 4th and 5th Anti-Money Laundering Directive in the Member States which are closely interlinked. At the current status of investigations, the disclosure would undermine the protection of investigations aims. We consider that the disclosure of the document would affect the climate of mutual trust between the authorities of the Member State concerned and the Commission."*

You also referred to the *Petrie* judgment, saying it supported the protection of documents related to infringement proceedings.[1]

In Case T-233/09, the General Court confirmed that simply because a document concerns an interest protected by an exception, that is not sufficient to make it subject to that exception. It is not sufficient that the disclosure of a document could bring a hypothetical harm to a protected interest; there must be a reasonably foreseeable risk. The institution deciding on disclosure must weigh the specific interest which must be protected through non-disclosure with the general interest in documents being made accessible.[2]

In only claiming that the disclosure would affect a climate of mutual trust between Member States and the Commission, a reasonably foreseeable, non-hypothetical harm to the purpose of an investigation has not been concretely demonstrated, especially not to such a level that would compensate denying a citizen their fundamental right of access to documents.

[1] Case T-191/99, judgement of 11 December 2001, [2001] ECR-11-3677.
[2] Case T-233/09, judgement of 22 March 2011, ECLI:EU:T:2011:105.

- **The overriding public interest test under Article 4(2) in disclosure has not been properly considered.**

Two to five percent of global GDP are laundered each year.[3] In the EU, this would mean a sum of 268 to 670 billion Euros in 2020 alone.[4] The public has a very high interest in preventing this vast amount of money from being redirected through criminal channels. This interest can be ascertained from several high-profile investigations throughout the years, including the International Consortium of Investigative Journalists' Luxembourg Leaks, Paradise Papers, Panama Papers, and Pandora Papers.[5]

The EU has recognised this interest throughout the years with extensive legislation, especially including the various Anti-Money Laundering (AML) Directives. The public's interest therefore also extends to the proper transposition of these Directives by the EU member states, which includes an interest in the disclosure of documents related to infringement procedures opened in regard to these transpositions. As the Court has stated in Case C-280/11 P, responding to this public interest through openness, including access to documents, results in an administration with increased legitimacy, higher effectiveness and more accountability.[6]

It is precisely because the investigations are ongoing that documents related to them should be disclosed:

> *"If citizens are to be able to exercise their democratic rights, they must be in a position to follow in detail the decision-making process within the institutions taking part in the legislative procedures and to have access to all relevant information."*[7]

There is a pressing need and urgency for beneficial ownership registers to be put in place, but transposition of the AML Directives and infringement procedures related to them have been ongoing for several years: In the case of Cyprus and Lithuania since 2017, for Denmark since 2018 and for Italy and Hungary since 2019. The public has the right to know why there are significant delays in the process.

For all these reasons, there can be no doubt that the public interest in participating in an informed discussion on the proper transposition of the AML Directives is very high. It should therefore be taken into consideration when deciding if the public interest in disclosure of these documents outweighs the harm caused by disclosure.

Yours faithfully,

Maximilian Henning

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[3] https://www.unodc.org/unodc/en/money-laundering/overview.html
[4] https://ec.europa.eu/eurostat/web/products-eurostat-news/-/ddn-20211220-1
[5] Luxembourg Leaks: https://www.icij.org/investigations/luxembourg-leaks/
Paradise Papers: https://www.icij.org/investigations/paradise-papers/
Panama Papers: https://www.icij.org/investigations/panama-papers/
Pandora Papers: https://www.icij.org/investigations/pandora-papers/
[6] Case C-280/11 P, judgement of 17 October 2013, ECLI:EU:C:2013:671.
[7] Case T-233/09, judgement of 22 March 2011, ECLI:EU:T:2011:105.