



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE and CONSUMERS

The Director-General

Brussels, 17/03/2023
JUST.C3 (2023)1196866

Mr Patrick Costello
c/o Leinster House, Kildare St.,
Dublin 2
Ireland
E-mail: ask+request-12256-15d2bbb4@asktheeu.org

Subject: Your application for access to documents EASE 2022/6936

Dear Mr. Costello,

We refer to your request for access to European Commission documents registered on 29/11/2022 under the above-mentioned reference number.

You request access to documents which contain the following information: “all records relating to the meeting between the Data Protection Commission Ireland and the EU Justice Commissioner Didier Reynders on November 25th. This request includes but is not limited to correspondence about, minutes of and documents prepared for this meeting. [...] This also includes but is not limited to all communications and meetings with or concerning the Irish Data Protection Commission itself, and relevant communications and meetings with the Irish Government and other Commission DGs and European institutions and agencies.”

The following documents fall within the scope of your application:

- Briefing for the Country Visit of Commissioner Reynders of 24-25 November 2022, BASIS CAB REYNDERS/1560, Ares(2023)703075 (hereafter “document 1”);
- Mission Report Ireland – Country visit Commissioner Reynders – 24-25 November 2022, Ares(2023)157373 (hereafter “document 2”).

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

The parts of the two documents that do not directly relate to the subject of your request have been redacted as being “out of scope”.

With regard to document 1, one part of it has been blanked out as its disclosure is prevented by the exception to the right of access laid down in the second indent of Article 4(2) of Regulation (EC) No 1049/2001, which stipulates that “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of court

proceedings and legal advice [...] unless there is an overriding public interest in disclosure”.

The relevant undisclosed part of document 1 contains information revealing the position of the Directorate-General for Justice and Consumers in case C-115/22¹, which is pending before the Court of Justice of the European Union (CJEU). Disclosure of that information at this point in time would unduly interfere with the procedure of the CJEU.

Other parts of document 1 have been blanked out as their disclosure is prevented by the exception to the right of access laid down in the second paragraph of Article 4(3) of Regulation (EC) No 1049/2001, which stipulates that “[a]ccess to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure”.

The relevant undisclosed parts of document 1 contain opinions for internal use concerning the subjects in the scope of the visit of Commissioner Reynders of Ireland of 24-25 November 2022. Disclosure of that information would seriously undermine the decision-making process of the Commission.

A complete disclosure of document 1 is also 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 following personal data:

- the name of an EU staff member.

Article 9(1)(b) of the EU Data Protection Regulation² does not allow the transmission of this personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced.

In your request, you do not express any particular interest to have access to this personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in document 1.

Since document 1 contains questions originating from the Ireland's Data Protection Commissioner (DPC) concerning the fireside chat between the DPC Helen Dixon and Commissioner Reynders, the DPC has been consulted. The DPC has not objected to the disclosure of that part of document 1.

With regard to document 2, since it contains the position of Ireland's government and the DPC, they have been consulted.

¹ Request for a preliminary ruling from the Unabhängige Schiedskommission Wien (Austria) lodged on 17 February 2022, Case C-115/22.

² Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, *OJ L 295*, 21.11.2018, p. 39–98.

Ireland's government has objected to disclosure of one part of document 2 that concerns Minister Calleary's bilateral with Commissioner Reynders. Ireland's government has motivated its position as follows: it relies on article 4(2) of Regulation (EC) No 1049/2001, first indent (protection of commercial interests of a legal person), as the relevant undisclosed part of document 2 relates to the commercially sensitive information which belongs to a natural or legal person, and it could be harmful to them or to their interests if it is released. The DPC has not objected to the disclosure of the part of document 2 that concerns the meeting with DPC Helen Dixon.

Taking into account the opinion of Ireland's government, I regret to inform you that that part of document 2 has been blanked out as its disclosure is prevented by the exception to the right of access laid down in Article 4(2), first indent of the Regulation.

The exceptions laid down in Article 4(2) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. In your request you have indicated a matter of utmost public interest, referring to the "one-stop-shop" mechanism in the GDPR and the role of Ireland for the application of the GDPR. I have examined this alleged overriding public interest, but I have concluded that it does not outweigh the harm disclosure would cause to the interests protected by the invoked exceptions.

Please note that the two documents falling under the scope of your request were drawn up for internal use under the responsibility of the relevant services of the Directorate-General for Justice and Consumers. It solely reflects the services' interpretation of the interventions made and does not set out any official position of the third parties to which the documents refer. It does not reflect the position of the Commission and cannot be quoted as such.

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 to the Secretariat-General of the Commission within 15 working days upon receipt of this letter. You can submit it in one of the following ways:

by asking for a review via your portal³ account (available only for initial requests submitted via the portal account),

by mail:

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 faithfully,

(e-signed)
Ana GALLEGO

³ <https://www.ec.europa.eu/transparency/documents-request>