Subject: Your request for Access to Documents 2023/3811 - Fair Solution Proposal.

Dear Mr Logue,

We refer to your request for access of documents of 3 July 2023 registered under the reference 2023/3811, by which you request “All of the written pleadings including annexes in case C-444/21, Commission v Ireland”.

Documents concerned, assessment of documents and consultation of third parties

The Legal Service has established a list of the documents concerned by your request. The total number of documents requested is around 40, for a total of over 750 pages to be analysed. Most of the documents originate from third parties, while the Commission is the author of the remaining ones.

Please note that regarding the Commission's documents, the Commission's Legal Service has to carry out a concrete assessment of them before taking the decision of granting / refusing access. This is to guarantee that they can actually be disclosed and do not contain any information that should be covered by any of the exceptions of Regulation 1049/2001, despite the fact that these cases are no longer pending before the Court.

With regard to the documents originating from third parties, the Commission has to consult these parties according to Article 4(4) of Regulation 1049/2001, which provides that the institution shall consult the third parties with a view to assessing whether an exception in paragraph 1 of 2 is applicable. Therefore, the Legal Service will carry out the consultation procedure setting a deadline of 10 working days, in order for the third parties concerned to communicate the conclusions of their assessments. This consultation period, adds an additional administrative step to the handling of your request.

Once the process of consultation is concluded, the Legal Service will have to proceed to a final assessment of the documents in the light of the comments received and, where necessary, to redact the parts of the documents to which one or several exceptions apply. Finally, it will have to draft the reply, submit it for review and approval by the competent persons and prepare the reply as well as the documents for electronic dispatch.

Fair solution proposal

Due to the large number of documents concerned by your request and their volume, the above-stated consultation process and the procedure following it, the Legal Service will be unable to provide you with a reply within the time limit set by Article 7 of Regulation 1049/2001. In this respect, please also note that the Commission cannot privilege one applicant and has to guarantee that all the requests are dealt with within the deadlines of Regulation 1049/2001 or, where not
possible – as in the present case – to seek a fair solution in conformity with Article 6(3) that reconciles the interests of the applicant with those of good administration.

In accordance with the case-law of the EU Courts, a fair solution can only concern the content or the number of documents applied for, not the deadline for replying (judgment of 2 October 2014 in Case C-127/13, Guido Strack v. Commission, EU:C:2014:2250, paragraphs 26-28). This means that the scope of your request must be narrowed down in a way that would enable its treatment within the extended deadline of 15 + 15 working days from the date of registration of your request.

In view of the foregoing, we would like to propose a fair solution that enables us to reconcile your interest with the principle of good administration and without prejudice to other applicants’ requests.

The Legal Service considers that it would be in a position to deal within the extended deadline with the assessment of the main pleadings, including lists of annexes (but without the annexes themselves - 6 documents which correspond to approximately 93 pages).

Kindly send your agreement to this proposal to the following email address: sj-xxxxxxxxxx@xx.xxxxxx.xx.

Please note that in the absence of a reply within five working days, we will limit the scope of your request to those parts that can be processed within the extended 30 working day period.

Once the Commission has sent you its reply, you may certainly file a new request for access to documents.

Yours faithfully,

Access to Documents team

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