Subject: Request for access to documents
Ref.: Your request of 29 January 2024 registered under reference 2024/0538.

Dear Mr Logue,

I refer to your application under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹, by which you request access to the ‘written observations of Ireland in Case C-687/21, BL v MediaMarktSaturn²’.

1. PARTIAL DISCLOSURE OF THE WRITTEN OBSERVATIONS BY IRELAND

As far as this document is concerned, in accordance with Article 4(4) of Regulation (EC) No 1049/2001, the Commission has consulted Ireland, as the author of the document, on the possible disclosure.

Following the consultation, I would like to inform you that Ireland agreed to a partial disclosure of their written observations, on the grounds that this document is partially covered by the exception provided for in Article 4(2), second indent ("protection of court proceedings") of Regulation (EC) No 1049/2001, as will be explained below.

Please note that Article 4(2), second indent, (“protection of court proceedings”) of Regulation (EC) No 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”.

The purpose of the exception for the protection of court proceedings is to protect the integrity of court proceedings and to ensure the proper course of justice. In this sense, the Court of Justice has recognised in its judgment in Joined Cases C-514/07P, C-528/07P and C-532/07P that disclosure of pleadings lodged before the Court of Justice in pending court proceedings is presumed to undermine the protection of these proceedings³.

The Court has furthermore stated that with the closure of the proceedings there are no longer grounds to presume that disclosure of the pleadings would undermine the judicial activities of the Court⁴.

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² Judgement of the Court (Third Chamber) of 25 January 2024, C-687/21, BL v MediaMarktSaturn Hagen-Iserlohn GmbH, ECLI:EU:C:2024:72.
⁴ API judgment, paragraphs 130 and 131.
However, the Court has admitted the possibility that disclosure of pleadings relating to court proceedings, which are closed but connected to other proceedings, may create a risk that the later proceedings might be undermined, depending inter alia on the degree of similarity between the arguments put forward in the two cases, and on whether the parties are the same. In the present instance, although the proceedings in Case C-687/21 have been closed, the issues discussed in that case, namely questions of damages for infringements of the General Data Protection Regulation, are closely related to those subject to currently pending proceedings in Cases C-590/22, C-65/23, C-182/22, C-189/22, C-741/21. Therefore, Ireland considers that the full disclosure of the written observations submitted by Ireland in Case C-687/21, going beyond parts of factual nature, may reveal not only the Ireland’s detailed reasoning in relation to the issues raised in the closed case but also in the related cases in which judgments have yet to be delivered and would thus undermine Ireland’s position in the related pending cases.

In the light of the above, I consider that the parts of the document representing the arguments of Ireland must be protected and need to remain confidential in order not to undermine the ongoing court proceedings, in accordance with the exception for the protection of court proceedings, laid down in Article 4(2), second indent, of Regulation (EC) No 1049/2001.

In addition, some personal data has been deleted in the document disclosed, in accordance with Article 4 (l)(b) of Regulation (EC) No 1049/2001, as will be explained below.

Please also note that this document was transmitted by the Court of Justice to the Commission in its capacity as participant to the Court proceedings. Access to it is granted for information only and they cannot be re-used without the agreement of the originator, who holds a copyright on them. It does not reflect the position of the Commission and cannot be quoted as such.

2. PROTECTION OF PERSONAL DATA

As stated above, some personal data have been redacted in the document disclosed since it is covered by the exception provided for in Article 4 (l)(b) of Regulation (EC) No 1049/2001, in accordance with the European Union legislation regarding the protection of personal data.

The redacted information consists of the parts of the first names of the agents representing Ireland not reproduced in the judgment.

In the present case, it has not been established that it is necessary to have these data transmitted for any specific purpose in the public interest (Article 9(1)(b) of the Data Protection Regulation, i.e. Regulation (EU) No 2018/1725). Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the document, as there is a real and non-hypothetical risk that such public disclosure

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5 API judgment, paragraph 132 and 133.
could result in identifying the data subjects and consequently would harm their privacy and subject them to unsolicited external contacts.

Please note that the exception under Article 4(1)(b) does not envisage the possibility of demonstrating the existence of an overriding public interest under Regulation (EC) No 1049/2001.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Pursuant to Article 4(2) of Regulation (EC) No 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 protected parts of Ireland’s written observations that would outweigh the public interest invoked for the pending proceedings.

4. MEANS OF REDRESS

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 Secretariat-General at the following address:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Brussels

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

[signed electronically]
Daniel CALLEJA

Attachment: 1