Subject: Your confirmatory application for access to documents – Gestdem 2015/4510

Dear Mr Zinser,

I refer to your email of 15 December 2015 concerning your confirmatory application submitted on 10 December 2015 on the basis of Article 7(2) of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents¹ (hereafter Regulation 1049/2001).

I also refer to my letter of 14 December 2015 informing you that the above-mentioned confirmatory application was inadmissible, as it was lodged outside the applicable deadline provided in Article 7(2) of Regulation 1049/2001.

The latter provision indicates indeed that [i]n the event of a total or partial refusal, the applicant may within 15 working days of receiving the institution’s reply, make a confirmatory application asking the institution to reconsider its position.²

In your email of 15 December 2015, you seem to request a review of the inadmissibility of your confirmatory application on the ground that you received the initial reply of the Directorate-General for Justice and Consumers (‘DG JUST’) with a delay as well, namely on 16 October 2015.

¹ Official Journal L145, 31.05.2001 p.43
² Emphasis added.
I note in this respect that your initial application was submitted on 25 August 2015. On 15 September 2015, DG JUST informed you that an extended time-limit was needed as large files had to be examined in order to retrieve the requested documents. Therefore, the time-limit for handling your application was extended for fifteen working days in accordance with Article 7(3) of Regulation 1049/2001 and the new time limit expired on 7 October 2015.

DG Justice sent out its initial reply on 16 October 2015, seven working days after the extended time-limit.

I acknowledge that this delay in the initial reply by DG JUST was unfortunate, and I apologise for any inconvenience it may have caused.

According to Article 7(4) of Regulation 1049/2001, failure of the institution to reply within the prescribed time-limit equates a negative decision and entitles the applicant to lodge a confirmatory application. However, it does not have any bearings on the time limit (of fifteen working days from the moment of the implicit or explicit negative or partially negative decision) which applicants are required to meet for the submission of their confirmatory application.

In Co-Frutta v Commission, the General Court indicated that the period of 15 working days – which may be extended – within which the institution must reply to the confirmatory application, as laid down in Article 8(1) and (2) of Regulation No 1049/2001, is mandatory. However, the expiry of that period does not have the effect of depriving the institution of the power to adopt a decision.\(^3\)

In Ryanair v Commission, the General Court further clarified that the applicants' interest for annulment of implied decisions arising on the expiry of the extended period, become inadmissible as a result of the adoption of express decisions by the institution\(^4\).

The reasoning of this settled case-law which was adopted in respect to confirmatory decisions, applies a fortiori, by analogy, to initial decisions.

Therefore, in this instance, even though DG JUST failed to reply within the extended time-limit, its initial decision adopted on 16 October 2015 was still legally valid. Consequently, the delay in the transmission of the initial reply by DG JUST had no bearing on the time-limit available to you for introducing your confirmatory application pursuant to Article 7(2) of Regulation 1049/2001, which started to run from the date of receipt of the initial reply, namely 19 October 2015 (i.e. the date of the official acknowledgment of receipt of the registered letter sent by DG JUST, according to our records).


\(^4\) Judgment of 10 December 2010 in cases T-494/08 to T-500/08 and T-509/08, ECLI:EU:T:2010:511, paragraphs 41, 46 and 47.
Notwithstanding the regrettable delay of the initial decision, I must therefore reiterate that your confirmatory application is inadmissible, as it was submitted after the fifteen-working-day time-limit provided under Article 7(2) of Regulation 1049/2001 which started to run on 19 October 2015.

I would like also to draw kindly your attention to the fact that the Commission must apply Regulation 1049/2001, as any other rules, in full respect of the principle of equal treatment of applications. The fifteen-working-day time limit provided for in Article 7(2) of Regulation 1049/2001 for the submission of a confirmatory application following an (implicit or explicit) negative or partially negative initial decision is therefore applied systematically and equally to all citizens without exception.

Consequently, I regret to confirm that the Commission is not in a position to handle your application.

Yours sincerely,

Martin Kröger
Head of Unit