

EUROPEAN COMMISSION

Secretariat-General

Directorate E - Policy Co-ordination II
The Director

Brussels, 18/02/2016

Ares(2016) WS/JM/lv

Mr Alberto Alemanno

By e-mail only:

ask+request-2516-d582995d@asktheecu.org

Subject: Your application for access to documents under Regulation 1049/2001- GESTDEM 2016/259.

Dear Sir,

We refer to your e-mail dated 19/01/2016 in which you make a request for access to documents, registered on the same day under the above mentioned reference number.

We have been asked to examine your application in relation to the following items:

- *"The letter written by First Vice-President Timmermans to the Polish Government on 23 December 2015 to request further information about the situation regarding the Constitutional Tribunal;*
- *The letter by the EU Commission sent to the Polish Government on 30 December 2015 to seek additional information about the proposed reforms to the governance of Poland's Public State Broadcasters;*
- *The response received by the Commission on 7 January 2016 from Poland on the letter on the media law denying any adverse impact on media pluralism;*
- *The response received by the Commission on 11 January from Poland on the Constitutional Tribunal reform;*
- *The minutes of the College of Commissioners' orientation debate hold on 13 January 2016;*
- *The document(s) presented to the College in view of the first orientation debate to assess the situation in Poland under the Rule of Law Framework ;*
- *The information obtained from Poland in relation to the situation concerning the Constitutional Tribunal and on the changes in the law on the Public Service Broadcasters;*
- *The letter sent to the Polish government (Commission pre-recommendation or recommendation) and any other related document (Commission Assessment) in order to start the structured dialogue under the Rule of Law Framework."*

In order to guarantee transparency of the discussions, the Commission issued a Fact Sheet on 13 January 2016: "College Orientation Debate on recent developments in Poland and the Rule of Law Framework: Questions & Answers".

This document is available online: http://europa.eu/rapid/press-release_MEMO-16-62_en.htm and contains all the elements that informed the College's Decision. However, the exact document that was circulated to the College and the minutes of the orientation

debate are not accessible in accordance with the provisions of Article 4 of Regulation EC N°1049/2001 regarding public access to documents. Similarly, the letters exchanged between the European Commission and the Polish authorities which you request are not accessible. .

Article 4(3) second paragraph of Regulation N°1049/2001 provides 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 College orientation debate note and minutes to which you seek access were drawn up for internal purposes only. The debate which took place, as well as the related note, are part of deliberations and preliminary consultations within the meaning of Article 4 (3) second paragraph of Regulation N°1049/2001. Disclosure of the note or of the minutes would put at risk the internal decision-making process of the Commission, as it would seriously undermine the integrity of its internal reflection process given that discussions on this issue are still ongoing as part of a dialogue with Poland. The sensitive nature of the matters under discussion only reinforces this assessment.

Article 4(2) third indent of Regulation N°1049/2001 provides that *[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: [...]*

-, the purpose of inspections, investigations and audits,

[...] unless there is an overriding public interest in disclosure.

Article 4(3) first subparagraph of Regulation N°1049/2001 provides that *[a]ccess to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.*

The letters you refer to in your request are part of a structured and cooperative exchange with the Polish authorities in order to collect all relevant information. On this basis, the Commission will assess the situation with regard to the rule of law. The letters you refer to are both documents relating to the purpose of inspections, investigations and audits as well as documents received by an institution which relate to a matter where no decision has been taken within the meaning of Article 4(2) third indent and 4(3) first subparagraph of Regulation N°1049/2001. Disclosure of the letters would both undermine the purpose of inspections, investigations and audits and the institution's decision-making process. The sensitive nature of the matters under discussion again only reinforces this assessment.

Therefore, the exceptions laid down in Article 4(2) third indent and 4(3) first subparagraph of Regulation N°1049/2001 apply to the documents you have requested.

Both requests (relating respectively to the College orientation debate and the exchange of letters) have also been examined under the exceptions laid down in Article 4(2) third indent, 4(3) first subparagraph and Article 4 (3) second subparagraph of Regulation N°1049/2001 which indicate that they must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public, and secondly, outweigh the harm caused by the disclosure.

You have not put forward any arguments to demonstrate the overriding nature of the alleged public interest. Nor have we been able to identify any elements demonstrating the existence of an overriding public interest to disclose these documents that would outweigh the public interest in protecting the Commission's decision-making process.

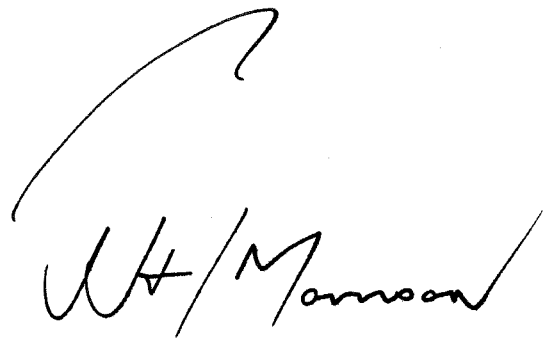
Finally we examined the possibility of granting partial access to the requested documents in accordance with Article 4(6) of Regulation N°1049/2001. However, partial access is not possible considering that the documents concerned are entirely covered by the exception protecting the decision-making process of the Commission. The publicly available factsheet should provide you with all the necessary information.

In accordance with Article 7(2) of Regulation N°1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretary-General Transparency Unit SG-B5
BERL 5/327
B-1049 Bruxelles
Or by e-mail to: sg-acc-doc@ec.europa.eu

Yours faithfully,

A handwritten signature in black ink, appearing to read 'JH/Morrison', with a large, sweeping flourish above it.

James Morrison
Director

Contact : Julien Mousnier – julien.mousnier@ec.europa.eu