



EUROPEAN COMMISSION
Competition DG
Director General

Brussels, 18/02/2013
COMP/D4/HN/mn – D/2013/015322

Mr Gavin Sheridan
E-mail: ask+request-346-e09ecd9c@asktheeu.org

**Subject: Application for access to documents according to Regulation 1049/2001
GESTEM 2013/0583 relating to Case SA.32504 Joint restructuring plan for
Anglo Irish Bank and Irish Nationwide Building Society – Ireland**

Dear Mr Sheridan,

I refer to your e-mail of 07 February 2013 by which you requested access to documents under Regulation 1049/2001.

1. DOCUMENTS CONCERNED

You request access to the documents in the possession of the Commission in relation to any proposed Irish legislation surrounding IBRC (known as the Irish Bank Resolution Corporation Bill 2013), and all communications between the Commission and the Irish authorities between 4 February 2013 and 7 February 2013 included concerning the case referred to above.

I regret to inform you that the access to the documents you requested is covered by the exception provided for by the policy relating to access to documents and that it cannot be made available to you.

2. BACKGROUND

The documents you request access to is part of the file mentioned above, which covers the State aid procedure concerning the joint restructuring plan for Anglo Irish Bank and Irish Nationwide Building Society dealt under Article 108 (1) TFEU. Even though the Commission took a final decision on the case on 29 June 2011, the case is still pending in the monitoring phase and has therefore not been closed yet.

Please specify the name of the case and the case number in all correspondence.

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11.
Office: J-70 03/225. Telephone: direct line (32-2) 295 63 98. Fax: (32-2) 296 12 42.

E-mail: stateaidgreffe@ec.europa.eu

3. APPLICABLE EXCEPTION

Pursuant to Article 4 (2), third indent of Regulation 1049/2001 the Commission shall refuse access to a document where its disclosure would undermine the protection of the purpose of inspections, investigations and audits.

This exception aims at protecting the Commission's capacity to ensure that Member States and other third parties comply with their obligations under Community law.

As the Court of Justice has ruled in case *Commission v TGI*¹ there exists, with regard to Article 4(2), third indent, of Regulation 1049/2001, a general presumption that disclosure of documents in the administrative files in State aid procedures in principle undermines the protection of the purpose of investigations. The Court reasoned that this follows from the fact that under the State aid procedural rules the interested parties, other than the Member State concerned, have no right to consult the documents in the administrative file and should such access be granted under Regulation 1049/2001 the nature of the procedure is likely to be modified and thus the system for review of State aid would be called into question.

The document to which you request access is part of the State aid file in the ongoing State aid procedure SA.32504. Thus, in accordance with the *Commission v TGI* case law, the requested document is covered by the above presumption unless the applicant demonstrates otherwise. In your e-mail you have not demonstrated that certain documents are not covered by the general presumption.

Moreover, the procedure at hand is based on an investigation of the Commission which must be carried out in co-operation with the national authorities. Disclosure of the exchanges between the Commission and the national authorities could prejudice this cooperation and thus undermine the purpose of the Commission's investigation.

In view of the above I consider that the document requested is manifestly covered by the exception related to the protection of the purpose of investigations.

4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Pursuant to Article 4(2) of Regulation 1049/2001, and according to the *Commission v TGI*² case law, the general presumption that access to the requested documents would undermine the purpose of investigations may be superseded by an overriding public interest in disclosure. Furthermore, an overriding public interest must be objective and general in nature and must not be indistinguishable from individual or private interests.

In your application, you have not put forward any arguments leading to identify an overriding public interest in disclosure. The Commission has not itself identified such overriding public interest. Consequently, the prevailing interest in this case rather lies in protecting the effectiveness of the Commission's State aid investigation.

¹ Case C-139/07 P *Commission v TGI* paragraph 61.

² Case 139/08 P *TGI v Commission*.

5. MEANS OF REDRESS

If you want this position to be reviewed you should write to the Commission's Secretary-General at the address below, confirming your initial request. You have 15 working days in which to do so from receipt of this letter, after which your initial request will be deemed to have been withdrawn.

The Secretary-General will inform you of the result of this review within 15 working days from the registration of your request, either granting you access to the document or confirming the refusal. In the latter case, you will be informed of how you can take further action.

All correspondence should be sent to the following address:

European Commission
Secretary-General
Transparency unit SG-B-5
BERL 5/327
B-1049 Bruxelles

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

Yours faithfully,

A handwritten signature in dark ink, consisting of a horizontal line with a diagonal stroke crossing it from the bottom left to the top right.

Alexander-ITALIANER
Director-General