BY E-MAIL AND REGISTERED MAIL WITH ACKNOWLEDGMENT OF RECEIPT

Subject: Request for access to documents
Ref.: Your request of 27 July 2017 registered under reference GestDem 2017/4372

Dear Mr Dehaye,

I refer to your request for access to documents, under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents\(^1\). Your request concerns "any written, legal and/or oral pleadings in Opinion 1/15 [...]. as well as any answer to questions asked within that context by the Court to the different parties".

I. IDENTIFICATION OF THE DOCUMENTS

After examination of the Legal Service’s files, the following documents relating to the case A-1/15 have been identified as falling within the scope of your request:

1. Request for an Opinion submitted by the European Parliament.
2. Written Observations of the European Commission.
5. Written Observations of Estonia.
6. Written Observations of Ireland.
7. Written Observations of Spain.
8. Written Observations of France.
9. Written Observations of the United Kingdom.

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\(^1\) OJ L 145, 31.05.2001, page 43.
10. Questions put by the Court of Justice.
11. Written reply of the European Parliament to the questions of the Court.
12. Written reply of the European Commission to the questions of the Court.
13. Written reply of the Council of the European Union to the questions of the Court.
14. Written reply of the European Data Protection Supervisor (EDPS)
15. Written reply of Bulgaria to the questions of the Court.
16. Written reply of Ireland to the questions of the Court.
17. Written reply of Spain to the questions of the Court.
18. Written reply of France to the questions of the Court.
19. Written reply of the United Kingdom to the questions of the Court.

II. ASSESSMENT

II.1. Documents already in the public domain

Please note that documents under numbers 1-3, 8-14 and 18-19 have been already released by the European Parliament and are available in its web page through the link:

http://www.europarl.europa.eu/RegistreWeb/search/typedoc.htm?codeTypeDocu=PRIORDIV

II.2. Other documents

As regards the submissions made by Bulgaria, Estonia and Ireland (documents under numbers 4-6 and 15-16) as well as the submissions made by Spain (documents under numbers 7 and 17), in the latter case disclosed partially by the European Parliament, the Commission has consulted the referred Member States on the disclosure of their documents in accordance with article 4 (4) of Regulation (EC) No 1049/2001. I would like to inform you that, in response to the above consultation:

- Ireland has agreed to the full disclosure of documents under numbers 6 and 16.
- Bulgaria and Estonia did not reply to the consultation by the Commission (documents under numbers 4, 5 and 15).
- Spain has agreed to the disclosure of documents under numbers 7 and 17 with the exception of paragraphs 6 (including its footnote 3), 8 and 16 in document under number 17. The Spanish authorities consider that the refused parts are covered by the exception provided for under article 4(1)(a), first indent of Regulation (EC) No 1049/2001 ("protection of the public security")\(^2\), for the reasons explained below. Furthermore, the name of the State Lawyer representing Spain before the Court of Justice has been blanked out in both documents since covered by the exception provided for in Article 4 (1)(b) of Regulation (EC) No 1049/2001 ("protection of personal data")\(^3\), in accordance with the European Union legislation regarding the protection of personal data.

\(^2\) OJ L 145, 31.05.2001, page 43.
\(^3\) "The institutions shall refuse access to a document where disclosure would undermine the protection of: (a) the public interest as regards: – public security [...]."
With regards to the pleadings lodged to the Court of Justice, the Court has recognised in its judgment in joined cases C-514/07P, C-528/07P and C-532/07P that, in cases where the proceedings have been closed by a decision of the Court, there are no longer grounds for presuming that disclosure of the pleadings would undermine the judicial activities of the Court⁴.

Since case A-1/15 is now closed, and in the absence of any objection from the authors, I am pleased to inform you that access can be granted to documents under numbers 4, 5, 6, 15 and 16 in accordance with Regulation (EC) No 1049/2001.

Furthermore, some additional personal data has also been expunged from the disclosed documents i.e. the handwritten signatures in the original documents from Member States and the initials of the Court's lawyers-linguists in the French translations. This information must be protected under the exception provided for in Article 4(1)(b) of Regulation (EC) No 1049/2001 ("protection of personal data"), as it will be explained below.

Accordingly, you will find enclosed a copy of documents under numbers 6 and 16 in English and the expunged versions of documents 4, 5, 7, 15 and 17 in the language of the respective Member State and a translation into French⁵.

III. RAISONS FOR PARTIAL REFUSAL

III.1. Protection of the public interest as regards public security (document 17)

Regarding the refused parties of document under number 17 the Spanish authorities consider that they are covered by the exception provided for under article 4(1)(a), first indent of Regulation (EC) No 1049/2001. They indicate that the Court of Justice has recognized the possibility of refusing access to information held by public authorities about persons or entities suspected of terrorism in case this disclosure would undermine the effectiveness of the operational fight against terrorism and, thus, harm the protection of the public security.

Disclosure of the withheld information may compromise the future effectiveness of the operations of the State's security forces and, consequently, compromise their capacity to ensure the public safety of citizens

Therefore, I conclude that the refused parts cannot be disclosed on the grounds of the exception in Article 4(1)(a), first indent of Regulation (EC) No 1049/2001. Please note that this provision does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

III.2. Protection of personal data

As indicated above, the name of the State Lawyer representing Spain before the Court of Justice has been blanked out in documents 7 and 17. In addition, the handwritten signatures in the original documents from Member States and the initials of the Court's lawyers-linguists in the French translations have been also deleted since covered by the exception provided for in Article 4(1)(b) of Regulation (EC) No 1049/2001 ("protection of personal data"), in accordance with the European Union legislation regarding the protection of personal data.

⁴ Judgment of the Court of 21 September 2010 in joined cases Sweden and Others v API and Commission, C-514/07P, C-528/07P and C-532/07P, ECLI:EU:C:2010:541, paragraphs 130 and 131.

⁵ The requested documents are only available in the language of the respective Member States and a French translation made by the services of the Court of Justice.
Indeed, when access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable. According to Article 8(b) of Regulation 45/2001, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced. Those two conditions are cumulative.

I consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned.

If you wish to receive the expunged personal data, I invite you to provide us with arguments showing the need to have the personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data would be disclosed.

Please note that the exception of Article 4(1)(b) has an absolute character and does not envisage the possibility of demonstrating the existence of an overriding public interest.

IV. REUSE OF THE DOCUMENTS

Please note that these documents were transmitted by the Court of Justice to the Commission in its capacity as participant to the Court proceedings at stake. They are disclosed for information only and cannot be re-used without the agreement of the originator, who holds a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

IV. 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 Secretary-General at the following address:

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/327
B-1049 Bruxelles

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

The Secretary General will inform you of the result of this review within 15 working days from the date of registration of your request. You will either be given access or your request will be rejected in which case you will be informed of how you can take further action.

Yours sincerely,

Luis ROMERO REQUENA

Attachments: 12

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