



EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels.

Mr Arne Semsrott
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BY E-MAIL AND REGISTERED MAIL WITH ACKNOWLEDGMENT OF RECEIPT

Subject: Request for access to documents

Ref.: Your e-mail of 29 August 2017 registered under reference GestDem 2017/4942.

Dear Mr Semsrott,

I refer to your e-mail mentioned above requesting, under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹, a copy of the submissions to the Court of Justice in case C-638/16PPU, X et X contre État belge, demande de décision préjudicielle introduite par le Conseil du Contentieux des Étrangers (Belgique).

More precisely your request a copy of the pleadings submitted by the Commission and by the following Member States: Belgium, Czech Republic, Denmark, Germany, Estonia, France, Hungary, Malta, Netherlands, Austria, Poland, Slovenia, Slovakia and Finland.

Regarding the submissions by the governments of the referred Member States, I would like to inform you that the Court of Justice has only notified to the Commission the submission made by the Belgian Government. Article 2(2) of Regulation No 1049/2001 states that "*[T]his Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and its possession, in all areas of activity of the European Union*". Since, the Commission has not received the submissions made by the governments of Member States other than Belgium, it is not in a position to deal with this part of your request.

¹ OJ L 145, 31.05.2001, page 43.

As regards the observations submitted by the Belgian Government, in accordance with article 4(4) of Regulation (EC) No 1049/2001, the European Commission has consulted the Belgian authorities concerning their disclosure. I am pleased to inform you that the Belgian authorities agreed to that disclosure.

With regards to the Commission's observations, after a concrete assessment of the document requested under Regulation (EC) No 1049/2001, I am also pleased to inform you that access can be granted.

Accordingly, you will find enclosed a copy of the Commission's and of the Belgian Government's submissions. Please note that, the name of the official of the Court of Justice (page 1) and the signature (page 19) have been blanked out in the submission from Belgium. Indeed, this information is covered by the exception provided for in Article 4 (1)(b) of Regulation (EC) 1049/2001 ("*protection of personal data*")², in accordance with the European Union legislation regarding the protection of personal data.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable³. According to Article 8(b) of Regulation 45/2001⁴, 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.

Please note that the Written Observations of the Belgian Government 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.

As regards the Commission's Written Observations, you may reuse the disclosed document free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the document. Please note that the Commission does not assume liability stemming from the reuse.

² "*The institutions shall refuse access to a document where disclosure would undermine the protection of: [...] (b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data*".

³ Judgment of 29 June 2010 in case *Commission v The Bavarian Lager Co. Ltd*, C-28/08 P, EU:C:2010:378.

⁴ OJ L 8, 12.1.2001, page 1.

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 address below.

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