Dear Mr. Logue,

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. Your request concerns the written observations submitted by the parties and interveners in Case C-434/16.

The written observations submitted by the following parties have been identified in response to your request:

1. The European Commission,
2. the Irish government,
3. the Data Protection Commissioner,
4. Mr. Nowak,
5. the Austrian government,
6. the Czech government,
7. the Greek government,
8. the Hungarian government,
9. the Polish government and
10. the Portuguese government.

2 Judgment of the Court of 20 December 2017, in case C-434/16- Nowak, ECLI:EU:C:2017:994.
1. WRITTEN OBSERVATIONS SUBMITTED BY THE EUROPEAN COMMISSION

With regards to the Commission's observations, after a concrete assessment of the requested document, I am pleased to inform you that access can be granted.

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. WRITTEN OBSERVATIONS SUBMITTED BY OTHER PARTIES

As far as the written observations submitted by the other parties are concerned, in accordance with article 4(4) of Regulation (EC) 1049/2001, the European Commission has consulted the authors of the respective documents on their disclosure.

I would like to inform you that the Irish, Austrian, Hungarian, Polish and Portuguese governments, as well as the Data Protection Commissioner have agreed to the disclosure of their documents.

The Czech government and Mr. Nowak have not replied to our consultations. However, as the Court of Justice has recognised in its judgment in joined cases C-514/07P, C-528/07P and C-532/07P, 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 lodged to the Court of Justice would undermine the judicial activities of the Court.

Since the case concerned is now closed, and in the absence of an objection from the authors of the documents concerned, I would like to inform you that access can also be granted to the relevant documents in accordance with Regulation (EC) No 1049/2001.

Please note that personal data has been expunged in the written observations submitted by the Data Protection Commissioner and by Mr Nowak. More specifically, the handwritten signatures, as well as the name of the Court’s official have been expunged. This information must be protected under the exception provided for in Article 4 (l) (b) of Regulation (EC) 1049/2001 ("protection of personal data"), in accordance also with the European Union legislation regarding the protection of personal data.

Indeed, when access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable. According to Article 8(b) of this Regulation, 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.

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3 Judgment 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.

4 "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".


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.

Written observations submitted by the Greek government

As for the written observations submitted by the Greek government, the relevant authorities have refused to grant access, as they consider that the requested document must be protected in accordance with the exception provided for under article 4(2) second indent of Regulation (EC) No 1049/2001 for the protection of court proceedings.

Article 4(2) second indent states by way of exception that "[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [... ] court proceedings [...] unless there is an overriding public interest in disclosure".

The purpose of the exception for the protection of court proceedings is to protect the integrity of court proceedings and to ensure the proper course of justice. In this sense, the Court of Justice has recognised in its judgment in joined cases C-514/07P, C-528/07P and C-532/07P that disclosure of pleadings lodged before the Court of Justice in pending court proceedings is presumed to undermine the protection of these proceedings. The Court has furthermore stated that with the closure of the proceedings there are no longer grounds to presume that disclosure of the pleadings would undermine the judicial activities of the Court. However, the Court has admitted the possibility that disclosure of pleadings relating to court proceedings, which are closed but connected to other proceedings which remain pending, may create a risk that the later proceedings might be undermined.

The Greek authorities consider that disclosure of the State’s legal argumentation could harm its position in similar ongoing proceedings.

Accordingly, please find enclosed the requested documents, expunged of personal data where necessary, with the exception of the written observations submitted by the Greek government.

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.

3. Overriding public interest in disclosure

Pursuant to Article 4(2) of Regulation (EC) No 1049/2001, the exception to the right of access must be waived if there is an overriding public interest in disclosing the requested document. In order for an overriding public interest in disclosure to exist, this interest, firstly, has to be public and, secondly, overriding, i.e. in this case it must outweigh the interest protected under Article 4(2) second indent. In the present case, I see no elements capable of showing the existence of an overriding public interest in disclosure of the refused document that would outweigh the public interest in the protection of the ongoing national proceedings.

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7 Judgment of 21 September 2010 in joined cases C-514/07P, C-528/07P and C-532/07P - Sweden v API and Commission, API v Commission and Commission v API, EU:C:2010:541, paragraphs 130 and 131.
8 Ibid, paragraph 132.
4. 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 address below.

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/327
B-1049 Bruxelles
or by email to: sg-acc-doc@cc.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: 9