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Secretariat-General

Directorate B - Institutional and Administrative Policies
SG.B.4-Transparency

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By registered letter with AR:

Mr Mathias SCHINDLER
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Germany

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Subject: Your confirmatory application for access to documents under Regulation (EC) No 1049/2001 - GESTDEM 2018/811

Dear Mr Schindler,

I refer to your e-mail of 22 May 2018, registered on 25 May 2018, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹ (hereafter 'Regulation 1049/2001').

Please note that your confirmatory application is currently being handled. Due to the volume and content of the documents under review², and taking into account the fact that another confirmatory request originating from you³ is being dealt with by the Secretariat-General at the moment⁴, the analysis of the documents falling under the above-mentioned confirmatory application cannot be completed within the normal time limits set out in Article 7 of Regulation 1049/2001.

¹ Official Journal L 145 of 31.5.2001, p. 43.

² 143 documents are concerned by your confirmatory application under review. Please note that 589 pages were disclosed at initial stage. In addition, the initial decision on the first badge of documents (Ares(2018)1833352) covered 18 documents.

³ Your confirmatory application registered under reference number GESTDEM 2018/1846.

⁴ As confirmed by the General Court in its Judgment of 10 December 2010 in case T-494/08, *Ryanair v Commission*, the volume of several 'applications for access to documents' can be considered as a whole if they 'were made to the Commission almost simultaneously, [...] from the same applicant and covering cases which were connected.'

In the event of an application for which the handling would involve an inappropriate administrative burden, Regulation 1049/2001, based on its Article 6(3), provides for a possibility to confer with the applicant in order to find a *fair solution*.

In accordance with the case law of the EU Court, such a solution can only concern the content or the number of documents requested, not the deadline for replying.⁵ This means that the scope of the request must be reduced in a way that would enable its treatment within the extended deadline of 15 + 15 working days.

Based on the above-mentioned provision, we would kindly ask you to specify the objective of your request and your specific interest in the documents requested⁶, and whether you could significantly narrow down the scope of your request, so as to reduce it to a more manageable amount of documents.

We would also kindly ask you to specify if your access to documents requests are introduced on behalf of your employer, as it would seem from your postal address that these requests relate to your professional activity as assistant to Member of the European Parliament Ms REDA.

It would also be useful if you would specify in which capacity you filed the 21 earlier access to documents requests, which you introduced over the past four years. The Directorate-General for Communications Networks, Content and Technology dealt with seven of these requests:

- GESTDEM 2017/444;
- GESTDEM 2016/6031;
- GESTDEM 2016/4441;
- GESTDEM 2016/2855;
- GESTDEM 2015/5033;
- GESTDEM 2015/3828;
- GESTDEM 2015/4384.

Several of these requests were wide-scoped. You challenged five of the initial decisions taken by the Directorate-General for Communications Networks, Content and Technology.

As regards your confirmatory request registered under GESTDEM number 2018/811, please be informed that, according to our preliminary workload estimate, the handling of all documents falling under the scope of your request would require more than 194 working days of one full-time equivalent (FTE), covering the following steps:

- search for possible additional documents falling within the scope of your request (two working days);

⁵ Judgment of 2 October 2014 in *Guido Strack v Commission*, Case C-127/13, EU:C:2014:2250, paragraphs 26-28.

⁶ *Ibid*, paragraph 28; Judgment of 22 May 2012 in *EnBW Energie Baden-Württemberg v Commission*, Case T-344/08, EU:T:2012:242, paragraph 105.

- quick screening of the documents and preliminary assessment of your confirmatory request (two working days);
- contacts and exchanges with the line Directorate-General concerning its initial reply and your arguments brought forward in your confirmatory application (five working days);
- conducting several third-party consultations, including Member States, under Article 4(4) of Regulation 1049/2001 and (possibly) a further dialogue with the third party (30 working days);
- assessment of replies provided by the third parties in collaboration with the line Directorate-General (30 working days);
- (possible) overruling of the opposition of third parties to disclose documents originating from them, including contacts with the line Directorate-General and the Legal Service (20 working days);
- assessment of the documents, also with the view of (possibly) granting (further) partial access and (possible) redactions of the relevant parts protected under exceptions to Regulation 1049/2001 (70 working days);
- preparation of the draft reply (20 working days);
- consultation of the line Directorate-General and the Legal Service on the draft reply (20 working days);
- formal approval of the draft decision by the Secretary-General, (possible) final check of the documents to be released and dispatch of the reply (15 working days).

The estimated workload corresponds to the time of one Commission staff working full time on your request and is based on past experience with requests concerning the same type of documents. Given the fact that the staff concerned will, during the same period of time, have to perform also other tasks, including, for example, handling another confirmatory request lodged by you⁷ and requests for access to documents from other citizens, in order to safeguard the interests of good administration, the staff member concerned cannot be expected to work exclusively or mainly on your confirmatory request. It follows that your request cannot be handled within the extended period of 30 working days.

With a view to reaching a fair solution concerning the handling of your confirmatory request, taking into account the workload already engendered by assessing the workload of handling your request, and to respect the time-limits set by Regulation 1049/2001, we propose to:

- exclude from the scope of your confirmatory application the redactions of personal data based on Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation 1049/2001;

⁷ Registered under reference number GESTDEM 2018/1846.

- exclude from the scope of your confirmatory application the redactions of personal data based on Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation 1049/2001;
- exclude from the scope of this confirmatory application any document, which is/was dealt with in the framework of another initial or confirmatory application you or your employer filed;
- focus your confirmatory applications on documents relating to the decision-making process of the Commission, thus excluding documents relating to meetings with the persons working for the European Parliament, as this information is probably already known to you in the context of your work in the European Parliament;
- focus your confirmatory applications on documents relating to the decision-making process of the Commission, thus excluding documents relating to the Council activities;
- deal with an overall number of 10 documents in the context of this review.

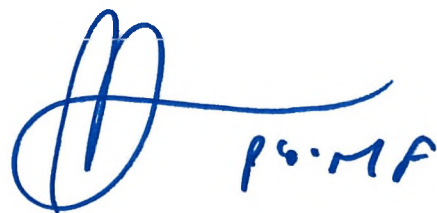
Alternatively, we would kindly ask you to examine again the list of documents provided to you by the initial decision (annexed), with a view to determining whether you could significantly narrow down the scope of your request (i.e. specific documents in which you are interested, the subject matter(s) and/or timeframe covered), so as to reduce it to the above-mentioned, more manageable number of ten documents. You could alternatively also choose ten individual documents from the annexed list of documents.

In order to enable us to provide you with a reply as soon as possible and within the deadlines set by Regulation 1049/2001, we would ask you for a swift response to our proposal for a fair solution, within five working days at the latest, by email to sg-acc-doc@ec.europa.eu.

In the absence of a reply within five working days, we will unilaterally take a decision on the handling of your application on the basis of the information at our disposal.

Thank you in advance for your understanding.

Yours sincerely,



Annex (1)

Martin Kroeger
Head of Unit