



EUROPEAN COMMISSION  
SECRETARIAT-GENERAL

Directorate C - Transparency, Efficiency & Resources  
The Director

Brussels,  
SG.C/VT

Ms Margarida Da Silva  
By e-mail: ask+request-7281-  
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**Subject: Your application for access to documents in accordance with  
Regulation 1049/2001– Ref. GestDem 2019/5245**

Dear Ms Da Silva,

I refer to your e-mail dated 11 September 2019, registered on the same date under the above-mentioned reference [Ref. Ares(2019)5696173]. I also refer to the letter of 27 September 2019 extending the deadline for the reply to your request until 23 October 2019 [Ref. Ares(2019)6016258].

In your application, you request access to “... *copies of all documents (including dates) which relate to:*

- *Commissioner Oettinger notifying of the establishment of a company,*
- *Commissioner Oettinger seeking authorisation for any new activities at the end of his term,*
- *Requests to the Independent Ethics Committee to assess Commissioner Oettinger's company and plans. “*

**1. Second indent of the request**

As specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

As regards your request under indent 2, please note that the Commission has not received a notification from Commissioner Oettinger in relation to an intention to engage in a professional activity after he will cease office. Therefore, given that at this stage no documents corresponding to the description given in indent 2 of your application are held, the Commission is not in a position to fulfil this part of your request.

## 2. First and third indents of the request

Commissioner Oettinger informed the President of the Commission last July about the establishment of a company called "*Oettinger Consulting, Wirtschafts- und Politikberatung GmbH*" together with his partner (designated as a director of the company), registered at the district court of Hamburg (Amtsgericht Hamburg) and about the fact that the company did not currently have any activity. He also indicated that he would notify his intention to engage in an activity at a later stage once his considerations with regard to an active role in this company had become more concrete in line with Article 11(2) of the Code of Conduct for the Members of the European Commission. In line with the existing rules, Commissioner Oettinger has updated his declaration of interests, which is available online.

President Juncker took note of the information provided to him and reminded the Commissioner of his obligations under Article 245 of the Treaty of the Functioning of the European Union (TFEU), in particular that he cannot perform or engage in any occupation during his term of office. The President fixed clear conditions to avoid any potential or perceived conflict of interest during the remaining time of the mandate of Commissioner Oettinger. The Commissioner has to strictly follow the procedures set out in Articles 4 and 12 of the Code and inform the President about any situation which may give rise to a conflict of interest or which may be perceived as conflict of interest.

The President asked for the opinion of the Independent Ethical Committee, which agreed with the President's strict position that there can be no activity with regard to the company until the end of his term of office. However, the process of examination of the future activities of this company has not been finalised awaiting a notification by Commissioner Oettinger of future activities in relation to the company. Commissioner Oettinger has not yet notified, or confirmed his intention to start, any concrete activities with regard to the company. The Independent Ethical Committee will continue to analyse the possible activities after such notification.

Consequently, the documents falling within the scope of indents 1 and 3 of your request cannot be disclosed since the internal decision-making procedure is still ongoing.

Therefore, following the examination of the existing documents, I must inform you that no access can be granted to these documents which are covered by the exception foreseen in Article 4(3), first subparagraph, (protection of the decision-making process) of Regulation 1049/2001.

This provision states that ... "*[a]ccess to a document drawn up by an institution for internal use or received by an institution which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the*

*document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure".*

From the above-mentioned description of the context and the state of play of the preparatory work, it is obvious that the examination of the future post term of office activity of Commissioner Oettinger is still pending. The refusal also applies to documents related to the examination of the compatibility of the establishment of the company with the existing ethical rules during Commissioner Oettinger remaining term of office. The content of these documents is directly linked to the examination of a future post term of office activity once notified and they are, at this stage, part of a larger decision-making process.

Commissioner Oettinger remains free to decide when to notify his intention to start the activities for "*Oettinger Consulting, Wirtschafts- und Politikberatung GmbH*" - as long as it is done before he takes up any activity - and the detailed content of the activities of the company.

Disclosure of the existing documents would lead to external interferences, and the right of the Commission to protect its "space to think" includes the examination by the Independent Ethical Committee. Public discussion of internal documents would be seriously detrimental to the decision-making process of the Commission in this matter.

We have considered whether partial access could be granted to the documents requested under indents 1 and 3 of your request. However, after careful examination, these documents are entirely covered by the above-mentioned exception.

The exception laid down in Article 4(3) of Regulation 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

In your application, you do not refer to any particular overriding public interest that would warrant public disclosure of the specific type of information included in the documents that would outweigh the need to protect that information in light of the exceptions of Regulation 1049/2001.

Based on my own analysis, I have also not been able to identify elements capable of demonstrating the existence of a public interest in accessing internal documents at this stage that would override the need to protect the ongoing decision-making process, in particular since there is no notification of a precise activity yet.

However, I would like to inform you that in accordance with Article 11(7) of the Code of Conduct, the Commission's decisions on post term of office activities and the related opinions of the Independent Ethical Committee will be made public on the Commission's

dedicated website with due consideration to the protection of personal data. Therefore, should Commissioner Oettinger intend to engage in a concrete activity for the company, both the decision and the related opinions of the Independent Ethical Committee would become public.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the Commission at the following address:

European Commission  
Secretariat-General  
Transparency, Document Management & Access to Documents (SG.C.1)  
BERL 7/076  
B-1049 Bruxelles

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours faithfully,



Tatjana VERRIER

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