



**EUROPEAN COMMISSION**

Secretariat-General

Directorate C - Transparency, Efficiency & Resources  
**The Director**

Brussels  
SG.C.1/CS/r

***By registered mail with AR***

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**Subject: Your applications for access to documents – GESTDEM 2020/2451  
and 2020/2853**

Dear Mr Hillebrandt,

I refer to your e-mail of 26 April 2020 in which you make a request for access to documents, registered on 28 April 2020 under the reference number GESTDEM 2020/2451.

I also refer to your e-mail of 13 May 2020 in which you make a further request for access to documents, registered on 14 May 2020 under the reference number GESTDEM 2020/2853.

**1. SCOPE OF YOUR REQUEST**

In your application registered under the reference number GESTDEM 2020/2451, you request access to all decisions on confirmatory applications adopted by the Commission in January and February 2019.

In your second application registered under the reference number GESTDEM 2020/2853, you request access to, I quote, ‘[T]he 31<sup>st</sup> to the 60<sup>th</sup> final decisions by the European Commission in confirmatory application procedures under Regulation 1049/2001 issued in 2019’. You further specify that ‘an initial request for access to the first 30 documents of this category was already made on 26 April 2019’.

Regarding both your applications GESTDEM 2020/2451 and 2020/2853, you further specify that you exclude from the scope of your request (i) any personal data contained in the requested decisions; and (ii) ‘any related documents’. By the latter, we understand your request to exclude explicitly the annexes to decisions on confirmatory applications, namely the documents forming part of these decisions and to which full or partial access is granted.

Your applications registered as GESTDEM 2020/2451 and 2020/2853 concern the same category of documents, namely decisions on confirmatory applications adopted by the Commission in the year 2019.

On 29 April 2020, the Commission sent you a letter proposing a fair solution in the meaning of Article 6(3) of Regulation (EC) No 1049/2001 for dealing with your initial application for access to documents registered under the reference number GESTDEM 2020/2451<sup>1</sup>. In its said letter, the Commission provided detailed reasons for its decision to put forward a proposal for a fair solution in accordance with Article 6(3) of Regulation (EC) No 1049/2001. It explained that your application concerns a very large number of documents, which need to be assessed individually, and that such a detailed analysis cannot be completed within the normal time limits set out in Article 7 of Regulation (EC) No 1049/2001.

Indeed, according to the Secretariat-General’s first, preliminary estimates of the workload for the treatment of your request, and taking into account the performance of other tasks by the staff concerned, the handling of 10 documents would take approximately 30 working days<sup>2</sup>, covering the following steps:

- identification of the documents falling under your request;
- retrieval and establishment of a complete list of the documents identified;
- scanning of the documents;
- assessment of the content of the documents in light of the exceptions of Article 4 of Regulation (EC) No 1049/2001;
- preparation of the reply;
- redaction of those parts of the documents to which one or several exceptions apply;
- internal review and approval of the draft decision; and
- preparation of the reply and the documents for dispatch.

Nevertheless, the Commission proposed to deal with an increased overall number of 30 documents falling within the scope of your request, or, in the alternative, to deal with all documents falling within the scope of your request as limited to one specific month covered by the timeframe of your request. In its decision to put forward this proposal, the Commission took into account the fact that you already exclude from the scope of your request any personal data contained in, as well as the annexes to, the requested documents,

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<sup>1</sup> Reference Ares(2020)2295844 - 29/04/2020.

<sup>2</sup> Taking into account other applications for access to documents and other tasks that the staff concerned are likely to have to deal with during the same period.

and your stated purpose of academic research. It also took into account the identical circumstances underpinning its earlier proposal for a fair solution concerning the handling of your similar initial requests registered under reference numbers GESTDEM 2019/7132, 2019/7134, 2019/7136, 2019/7137 and 2019/7138<sup>3</sup>.

In your reply of 29 April 2020, you stated that you agree to narrow down the scope of your request to 'either the first 30 confirmatory application decisions produced by the Commission in 2019, or to all confirmatory application decisions produced by the Commission in January 2019, whichever results in the highest number of documents being considered'<sup>4</sup>. Therefore, you indicated your agreement with the proposal for a fair solution put forward by the Commission and, as a result, the Secretariat-General of the Commission proceeded with handling your application registered as GESTDEM 2020/2451 by assessing the 30 decisions on confirmatory applications first adopted by the Commission in the year 2019, as this results in the highest number of documents being assessed.

In accordance with the case law of the EU Courts, Article 6(3) of Regulation (EC) No 1049/2001 may not be evaded by splitting an application into several, seemingly separate, applications<sup>5</sup>.

You submitted your second application for access to documents registered as GESTDEM 2020/2853 while being aware that, at the same time, the Commission is handling your first application registered as GESTDEM 2020/2451 based on the fair solution already agreed with you in view of respecting the time-limits set by Regulation (EC) No 1049/2001. By introducing a connected application, within the same time period pending the handling of your original request, and concerning the same category of requested documents, namely decisions on confirmatory applications adopted by the Commission, it appears that you have indeed aimed at evading the fair solution you agreed with the Commission by making a, seemingly separate, request.

Moreover, your application registered as GESTDEM 2020/2853 is wide in scope in itself, as it also concerns a large number of documents, which need to be assessed individually.

The Commission therefore concluded that the corresponding resources could not be allocated to handle your request(s), so as to safeguard the interests of good administration and to ensure the proper handling of applications originating from other applicants.

As stated by the EU Courts, the Commission needs to respect the principle of proportionality and ensure that the interest of the applicant for access is balanced against the workload resulting from the processing of the application for access in order to safeguard the interests of good administration<sup>6</sup>.

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<sup>3</sup> Reference Ares(2020)54028 - 07/01/2020.

<sup>4</sup> Reference Ares(2020)2304392 – 30/04/2020.

<sup>5</sup> Judgment of the General Court of 10 December 2010, *Ryanair v Commission*, T-494/08, EU:T:2010:511, paragraph 34.

<sup>6</sup> Judgment of the Court of First Instance of 13 April 2005, *Verein für Konsumenteninformation v Commission*, T-2/03, EU:T:2005:125, paragraph 102.

Therefore, the Commission decided to put forward another proposal for a fair solution in accordance with Article 6(3) of Regulation (EC) No 1049/2001. In its letter of 18 May 2020 concerning the handling of your initial applications GESTDEM 2020/2451 and 2020/2853<sup>7</sup>, the Commission proposed to continue to deal with the agreed number of overall 30 documents falling within the scope of your request GESTDEM 2020/2451, i.e., the 30 decisions on confirmatory applications first adopted in the year 2019, within the extended deadline of 30 working days, counting from the registration of your application GESTDEM 2020/2451, or, in the alternative, to deal with all documents falling within the scope of your request GESTDEM 2020/2853, i.e., the 31<sup>st</sup> to the 60<sup>th</sup> decisions on confirmatory applications adopted in the year 2019, within the extended deadline of 30 working days, counting from the registration of your application GESTDEM 2020/2853.

In your reply of 20 May 2020<sup>8</sup>, you stated that, while you disagree with the reasoning provided by the Commission for the reasons provided in your earlier correspondence of 19 May 2020<sup>9</sup>, to which the Commission replied on 20 May 2020<sup>10</sup>, you agree to withdraw your second request until the ‘maximum statutory period of consideration as provided under Regulation 1049/2001’.

In its reply of 26 May 2020<sup>11</sup>, the Commission informed you that it takes note of your stated preference to withdraw your second application GESTDEM 2020/2853 and to, therefore, continue with the treatment of your application GESTDEM 2020/2451. It also informed you that, per its above-referenced proposal for a fair solution of 18 May 2020, you will receive a reply to your application within the extended deadline of 30 working days counting from the registration of your application GESTDEM 2020/2451.

Therefore, the Commission has proceeded, pursuant to your above-referenced replies of 29 April 2020 and 20 May 2020, by which you indicated your agreement to the fair solutions proposed by the Commission on 29 May 2020 and 18 May 2020 respectively, to handle the 30 decisions on confirmatory applications first adopted by the Commission in the year 2019, as this results in the highest number of documents being assessed.

These documents, including their detailed references, are listed in annex I of this reply.

Documents 11 and 18, as listed in annex I, have been adopted by the Commission in two linguistic versions. Therefore, for these requested documents, both available linguistic versions are enclosed in this reply.

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001**

Following a detailed assessment of the documents in light of the provisions of Regulation (EC) No 1049/2001, I hereby inform you that:

- full access is granted to documents 1-5, 7, 9-15, and 17-30;

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<sup>7</sup> Reference Ares(2020)2600906 – 18/05/2020.

<sup>8</sup> Reference Ares(2020)2686847 – 25/05/2020.

<sup>9</sup> Reference Ares(2020)2628665 – 19/05/2020.

<sup>10</sup> Reference Ares(2020)2653053 – 20/05/2020.

<sup>11</sup> Reference Ares(2020)2724044 – 26/05/2020.

- partial access is granted to documents 6, 8 and 16, subject to the redaction of commercially sensitive information in accordance with the first indent of Article 4(2) (protection of commercial interests of a natural or legal person) of Regulation (EC) No 1049/2001, for the reasons set out below.

Personal data within the meaning of the Data Protection Regulation<sup>12</sup> has been redacted by default in the requested documents as falling outside the scope of your request. The relevant parts in the requested documents are therefore labelled as ‘out of scope’, accordingly.

Please note that document 9 contains information, in particular the name of a legal person and of its shareholder, which would allow the identification of the natural person making the confirmatory application due to its stated capacity as the insolvency administrator of that particular legal person. As this is personal data within the meaning of the Data Protection Regulation, the relevant parts have also been redacted in this document as falling outside the scope of your request, and are labelled as such.

### **2.1. Protection of commercial interests of a natural or legal person**

Pursuant to the first indent of Article 4(2) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure.

Documents 6, 8 and 16 contain the name of the client of the law firm associated with the applicant that submitted the respective confirmatory application for access to documents and to whom the confirmatory decision was addressed. In document 8, the relevant undisclosed parts also contain the specific capacity under which the organisation represented requests access to the documents, which, combined with other information found in this document, could allow the identification of the organisation concerned.

Information revealing details about clients of law firms is not publicly available, as it results from an understanding between the firm and its client that such information would remain confidential.

Given the competitive environment in which law firms operate, information disclosing the identity of their clients might give competitors an unfair advantage. Moreover, it can undermine the client’s trust in the law firm concerned, if the existence of their business relationship becomes publicly known. Therefore, this information should be considered as commercially sensitive business information.

Consequently, there is a real and non-hypothetical risk that public access to the above-mentioned information would undermine the commercial interests of the legal persons concerned.

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<sup>12</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 2018, 21.11.2018, p.39.

I conclude, therefore, that access to the relevant parts of documents 6, 8 and 16, disclosing the names, or other information allowing the identification, of clients of these legal persons, must be denied on the basis of the exception laid down in the first indent of Article 4(2) of Regulation (EC) No 1049/2001.

### **3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exceptions laid down in Article 4(2) of Regulation (EC) No 1049/2001 apply unless 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 applications, you do not refer to any particular overriding public interest that would warrant public disclosure of the documents in question, and that would outweigh the need to protect them in light of the exceptions of Regulation (EC) No 1049/2001.

Nor have I been able, based on my own assessment, to establish the existence of a public interest that would override the need to protect the commercial interests of a natural or legal person, grounded in the first indent of Article 4(2) of Regulation (EC) No 1049/2001.

### **4. PARTIAL ACCESS**

As indicated above, full access is granted to documents 1-5, 7, 9-15, and 17-30, and partial access is granted to documents 6, 8 and 16 pursuant to the first indent of Article 4(2) (protection of commercial interests of a natural or legal person) of Regulation (EC) No 1049/2001.

### **5. MEANS OF REDRESS**

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  
Unit C.1. 'Transparency, Document Management and Access to Documents'  
BERL 7/076  
B-1049 Brussels,  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

Tatjana VERRIER

Enclosures: (32)