Subject: Your application for access to documents – Ref GestDem No 2012/304

Dear Sir

We refer to your e-mail dated 25/05/2022, in which you make a request for access to documents, registered on 25/05/2022 under the above-mentioned reference number.

You request access to all documents related to infringement procedure INFR(2019)0126 against the Netherlands (concerning the transposition of Directive (EU) 2016/2341 (IORP II)).

Your application concerns the following documents:

– National transposing laws as notified by the Netherlands:


  – Besluit van 19 december 2018 tot wijziging van het Besluit financieel toetsingskader pensioenfondsen, het Besluit uitvoering Pensioenwet en Wet verplichte beroepspensioenregeling, het Besluit bekostiging financieel toezicht 2019, het Besluit prudentiële regels Wft, het Besluit gedragstoezicht financiële ondernemingen Wft en het Besluit markttoegang financiële ondernemingen Wft in verband met de implementatie van Richtlijn 2016/2341/EU van het Europees Parlement en de Raad van 14 december 2016 betreffende de werkzaamheden van en het toezicht op instellingen voor bedrijfspensioenvoorziening (IBPV’s)
Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we have come to the following conclusions:
Documents 1 to 3 listed above may be fully disclosed, while documents 4-9 listed above may be partially disclosed.

With regard to documents 4, 5 and 6 listed above, a complete disclosure of the identified documents is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001, because they contain the following personal data:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;
- the names/initials and contact details of other natural persons;
- handwritten signatures/abbreviated signatures of natural persons.

Article 9(1)(b) of the Data Protection Regulation does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, we conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the requested documents, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

With regard to documents 7 to 9, the redacted parts of those documents fall out of the scope of your request as they do not concern infringement procedure INFR(2019)0126.

Finally, with regard to documents 10-13, I regret to inform you that access cannot be granted, as disclosure is prevented by exception to the right of access laid down in Article 4(2) third indent of Regulation (EC) No 1049/2001 that provides:

‘The institutions shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.’

Documents 10-13, which you seek to obtain, relate to an ongoing investigation (the conformity assessment of the national transposing measures of Directive 2016/2341 by the Member State concerned), which may lead to a possible infringement of EU law.

For your information, in order to ensure the correct transposition of European Directives into the national legal frameworks, the European Commission carries out a two-stage assessment of national transposition measures notified in the former MNE system:

1) assessment of the completeness of notified measures - aiming at verifying whether the Member States have transposed all the legal obligations stemming from the provisions of a Directive, and
2) assessment of the conformity of the same measures – which aims to ensure the correctness and the validity of the transposed legal obligations into the national legal system.

Infringement procedure INFR(2019)0126 was opened in the context of the assessment of the completeness of the measures notified by the Netherlands. The Commission is currently in the process of carrying out the second-stage of the assessment of the measures – the assessment of the conformity of those measures.
Therefore, disclosure of documents 10-13 would undermine the purpose of the ongoing investigation regarding the conformity assessment of the national transposing measures of Directive 2016/2341 by the Member State concerned; indeed, disclosure of the document at this point in time would affect the climate of mutual trust between the authorities of the Member State and the Commission, which is required to enable them to resolve any possible issues related to the conform transposition of the Directive without having to open new infringement proceedings related to the conform transposition, or having to refer those proceedings to the Court of Justice. Therefore, the exception laid down in Article 4(2) third indent of Regulation (EC) No 1049/2001 applies to these documents.

We have considered whether partial access could be granted to documents 10-13. However, this is not possible as after expunging the confidential information, the remaining parts of the documents will be meaningless.

The exceptions laid down in Article 4(2) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents.

We have examined whether there could be an overriding public interest in disclosure, but we have not been able to identify such an interest. In your request, you argue that because of the importance of correct and swift transposition of the Directive there is an overriding public interest in disclosure of all documents under infringement procedure INFR(2019)0126. While acknowledging that transparency is an important public interest, we consider that in the present case, this interest does not outweigh the potential harm, which the disclosure of documents 10-13 would cause to the ongoing investigation regarding the conformity assessment of the national transposing measures of Directive 2016/2341 by the Netherlands, for the reasons stated above.

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 Secretary-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 e-mail to: sg-acc-doc@ec.europa.eu

Yours sincerely,

(e-signed)

John BERRIGAN