

EUROPEAN COMMISSION
Secretariat-General

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

Brussels, 18.12.2015
SG.B.4/CMN/rc -
sg.dsg2.b.4(2015)6573153

By registered mail:
Mr Klaus Zinser
Hauptstrasse 8
88427 Bad Schussenried
Deutschland

Copy by email:
ask+request-2204-
5d54f973@askthecu.org

**Subject: Your confirmatory application for access to documents – Gestdem
2015/4356**

Dear Mr Zinser,

I refer to your email of 15 December 2015 concerning your confirmatory application submitted on 10 December 2015 on the basis of Article 7(2) of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents¹ (hereafter Regulation 1049/2001).

I also refer to my letter of 14 December 2015 informing you that the above-mentioned confirmatory application was inadmissible, as it was lodged outside the applicable deadline provided in Article 7(2) of Regulation 1049/2001.

The latter provision indicates indeed that *[i]n the event of a total or partial refusal, the applicant may within 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.*²

In your email of 15 December 2015, you seem to request a review of the inadmissibility of your confirmatory application on the alleged grounds that you have not received the initial reply of the Directorate-General for Justice and Consumers ('DG JUST') *within the given timeframe of 15 working days* and that your request has not been answered in all details as it should have been done.

¹ Official Journal L145, 31.05.2001 p.43

² Emphasis added.

I note in this respect that your initial application was submitted on 10 August 2015. DG Justice sent out its initial reply unfortunately after the expiration of the time-limit provided under Article 7 of Regulation 1049/2001, on 7 October 2015.

I acknowledge that this delay in the initial reply by DG JUST was regrettable, and I apologise sincerely for any inconvenience it may have caused.

According to Article 7(4) of Regulation 1049/2001, failure of the institution to reply within the prescribed time-limit equates a negative decision and entitles the applicant to lodge a confirmatory application. However, it does not have any bearings on the time limit (of fifteen working days from the moment of the implicit or explicit negative or partially negative decision) which applicants are required to meet for the submission of their confirmatory application.

In Co-Frutta v Commission, the General Court indicated that [t]he period of 15 working days – which may be extended – within which the institution must reply to the confirmatory application, as laid down in Article 8(1) and (2) of Regulation No 1049/2001, is mandatory. However, the expiry of that period does not have the effect of depriving the institution of the power to adopt a decision.³

In Ryanair v Commission, the General Court further clarified that the applicants' interest for annulment of implied decisions arising on the expiry of the extended period, become inadmissible as a result of the adoption of express decisions by the institution⁴.

The reasoning of this settled case-law which was adopted in respect to confirmatory decisions, applies *a fortiori*, by analogy, to initial decisions.

Therefore, in this instance, even though DG JUST failed to reply within the extended time-limit, its express initial decision adopted on 7 October 2015 was still legally valid. Consequently, the delay in the transmission of the initial reply by DG JUST had no bearing on the time-limit available to you for introducing your confirmatory application pursuant to Article 7(2) of Regulation 1049/2001, which started to run from the date of receipt of the initial reply, namely 8 October 2015 (i.e. the date of the official acknowledgment of receipt of the registered letter sent by DG JUST, according to our records).

Against this background, if you considered that the above mentioned initial reply of DG JUST equated to a total or partial refusal within the meaning of Article 7(2), you were required to submit your confirmatory application by 29 October 2015.

³ Judgment of 19 January 2010 in Joined Cases T-355/04 and T-446/04, ECLI:EU:T:2010:15, paragraph 56.

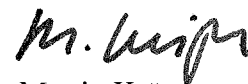
⁴ Judgment of 10 December 2010 in cases T-494/08 to T-500/08 and T-509/08, ECLI:EU:T:2010:511, paragraphs 41, 46 and 47.

Notwithstanding the unfortunate delay of the initial decision, for which I would like to apologise again, I must therefore reiterate that your confirmatory application is inadmissible, as it was submitted after the fifteen-working-day time-limit provided under Article 7(2) of Regulation 1049/2001 which started to run on 8 October 2015 (i.e., date of your receipt of the final initial reply of DG JUST).

I would like also to draw kindly your attention to the fact that the Commission must apply Regulation 1049/2001, as any other rules, in full respect of the principle of equal treatment of applications. The fifteen-working-day time limit provided for in Article 7(2) of Regulation 1049/2001 for the submission of a confirmatory application following an (implicit or explicit) negative or partially negative initial decision is therefore applied systematically and equally to all citizens without exception.

Consequently, I regret to confirm that the Commission is not in a position to handle your application.

Yours sincerely,



Martin Kröger
Head of Unit