



EUROPEAN COMMISSION  
SECRETARIAT-GENERAL

Directorate A – Decision-making Process  
The Director

Brussels, *21 December 2016*  
SG.A./JAP/jsm

*By registered mail:*  
Mr. Nikolaj Nielsen  
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*Advance copy to:*  
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**Subject: Your application for access to documents of 1 December 2016  
Gestdem n° 2016/6787**

Dear Mr. Nielsen,

Thank you for your e-mail of 1 December 2016 requesting access to documents under Regulation (EC) No 1049/2001<sup>1</sup> regarding public access to European Parliament, Council and Commission documents ('Regulation 1049/2001').

You have requested access to the "minutes of the College meeting of 2 March 2016 relating the lifting of the immunity of a senior commission official".

The following document falls under the scope of your request:

- Special minutes of the 2159th meeting of the Commission held in Brussels on 2 March 2016, PV(2016) 2159, 2nd part (PVS).

The decision made by the Commission to lift the immunity of the concerned senior official has been made in the context of the investigation of a complaint lodged with the Belgian judicial authorities within a national pending procedure.

The concerned senior official has submitted an application to the Court of Justice for the annulment of the Commission decision in question (Case T-251/16).

Having carefully examined your request under Regulation 1049/2001, I therefore regret to inform you that the document concerned falls under the exception of Article 4(2), second indent, of that Regulation which provides that "*[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] court proceedings [...] unless there is an overriding public interest in disclosure*".

The purpose of this exception to the Regulation's general rule of transparency is to guarantee the independence of the EU institutions in their dealings with the Court of Justice and to ensure the proper administration of justice. The release of the

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<sup>1</sup> OJ L 145, 31.05.2001, page 43

Commission's special minutes would undermine the protection of the ongoing court proceedings, namely Case T-251/16.

Moreover, Article 4(3) of Regulation 1049/201 also provides 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.*"

Although the Commission decision has been taken, the internal decision making process cannot, for the moment, be considered as definitively closed in legal terms. Judicial proceedings concerning the Commission decision waiving in part the immunity of the concerned senior official are currently ongoing before the Court of Justice. The Commission could, depending on the ultimate result of these proceedings, be called upon to reassess the situation. Disclosing the decision at this moment in time would consequently seriously undermine the institution's decision-making process.

In accordance with Article 4(6) of Regulation 1049/2001, I have considered the possibility of granting partial access to the document requested. However, for the reasons explained above, no meaningful partial access is possible.

Consequently, I have come to the conclusion that the document requested is covered in its entirety by the invoked exceptions.

The exceptions laid down in Article 4 (2) and 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.

I fail to see, in this case, an overriding public interest that would outweigh the interest of the protection of the Commission's decision-making process.

The fact that the requested document does not relate to a legislative activity, for which the Court of Justice has acknowledged the existence of wider openness, provides further support to this conclusion.

In accordance with Article 7(2) of Regulation 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  
Secretary-General  
Transparency unit SG-B-4  
BERL 5/282  
B-1049 Bruxelles  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Jordi AYET PUIGARNAU