



EUROPEAN COMMISSION
Secretariat-General

Directorate C - Transparency, Efficiency & Resources
The Director

Brussels
SG.C.1/CS/

By registered mail with AR

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Subject: Your applications for access to documents – GESTDEM 2019/7132, 2019/7134, 2019/7136, 2019/7137, 2019/7138

Dear Mr Hillebrandt,

I refer to your e-mails of 9 December 2019 in which you make five requests for access to documents, registered on the same day under the above-mentioned reference numbers.

1. SCOPE OF YOUR REQUEST

In your applications, you request full access to all ‘replies to confirmatory applications based on Regulation (EC) No 1049/2001’ adopted by the European Commission in 2014¹, 2015², 2016³, 2017⁴ and 2018⁵.

¹ Registered under reference number GESTDEM 2019/7138.

² Registered under reference number GESTDEM 2019/7137.

³ Registered under reference number GESTDEM 2019/7136.

⁴ Registered under reference number GESTDEM 2019/7134.

⁵ Registered under reference number GESTDEM 2019/7132.

The Commission proceeded to estimate the workload associated with the handling of the five initial applications introduced by you on the same day, concerning the same type of documents, i.e., decisions on confirmatory applications adopted by the Commission on the basis of Regulation (EC) No 1049/2001.

As indicated in the annex to the report from the Commission on the application in 2018 of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents⁶, the Commission provided the following numbers of replies to confirmatory requests based on Regulation (EC) No 1049/2001 in the years concerned by your applications:

- 272 in 2014;
- 230 in 2015;
- 220 in 2016;
- 259 in 2017; and
- 288 in 2018.

Based on the above numbers, there are at least 1.269 documents falling under the scope of your five initial applications, also considering that decisions on confirmatory applications enclose a varying number of annexes. These documents form part of these decisions and full or partial access was granted to them. Due to the very high volume of the documents under review⁷, the analysis of the documents falling under your above-mentioned applications cannot be completed within the normal time limits set out in Article 7 of Regulation (EC) No 1049/2001.

According to the Secretariat-General's preliminary estimates and based on past experience with requests concerning the same type of documents, the workload for dealing with your initial applications would require an excessive number of working days, estimated in at least 3.800 working days, covering the following steps:

- Identification, gathering and quick screening of the documents falling under your initial requests;
- assessment of the content of the documents;
- performing possible redactions of the relevant parts falling under exceptions of Regulation (EC) No 1049/2001, in particular based on the exception of Article 4(1)(b) of Regulation (EC) No 1049/2001 (protection of privacy and the integrity of the individual);
- preparation of the draft replies;
- preparation of the e-signatory of the files;
- formal approval of the draft decisions by the hierarchy of the Secretariat-General;
- and

⁶ COM(2019) 356 final.

⁷ As confirmed by the General Court in its Judgment of 10 December 2010 in case T-494/08, *Ryanair v Commission*, the volume of documents concerned under several applications for access to documents can be considered together, where these applications were made to the Commission almost simultaneously, from the same applicant and covering cases which were connected.

- final check of the documents to be released and dispatch of the replies.

These estimates took also into account other applications for access to documents⁸ and other tasks that the Commission staff concerned would have to deal with during the period of handling your initial applications.

The Commission therefore concluded that the workload relating to the disclosure of the documents requested under your initial applications would be disproportionate as compared to the objectives set by the applications for access to these documents, and that the corresponding resources could not be allocated to handle your requests, so as to safeguard the interests of good administration and to ensure the proper handling of applications originating from other applicants. Indeed, according to our first estimates referred to above, a maximum of 10 documents could be dealt with within the extended deadline of 30 working days, counting from the date of registration of your initial applications.

Therefore, the Commission decided to put forward a proposal for a fair solution in accordance with Article 6(3) of Regulation (EC) No 1049/2001.

1.1. Fair solution in accordance with Article 6(3) of Regulation (EC) No 1049/2001

In its letter of 23 December 2019, the Commission proposed a fair solution in the meaning of Article 6(3) of Regulation (EC) No 1049/2001 for dealing with your five initial applications for access to documents registered under reference numbers GESTDEM 2019/7132, 2019/7134, 2019/7136, 2019/7137 and 2019/7138, namely to deal with 2 documents falling within the scope of each of your requests, i.e., per year concerned, or, in the alternative, to deal with an overall number of 10 documents falling within the scope of your request as limited to one specific year.

In your reply of 28 December 2019, you counter-proposed to limit the scope of your requests to the confirmatory decisions adopted in the year 2018, and to exclude their annexes from the scope of your request.

In its letter of 7 January 2020, the Commission informed you that, notwithstanding the substantial reduction of the number of requested documents, the solution you proposed would still require the treatment of 288 documents, the individual assessment of which cannot be completed within the normal time limits set out in Article 7 of Regulation (EC) No 1049/2001 without entailing a disproportionate administrative burden for the Commission. In this light, and taking into consideration your proposed solution and your stated purpose of academic research, the Commission proposed to deal with an increased overall number of 30 documents falling within the scope of your requests, namely 30 confirmatory decisions, excluding their annexes, adopted in 2018. In order to provide you with a representative sample of confirmatory decisions for the stated purpose of your research into the Commission's implementation of Regulation (EC) No 1049/2001, the

⁸ Including similar initial applications for access to confirmatory decisions adopted by the Commission.

Commission further proposed to deal with such overall number of 30 documents as limited to one specific month, for instance the last month of the year 2018.

In your reply of 13 January 2020, you stated you cannot agree with the further solution proposed by the Commission. Unfortunately, therefore, despite its efforts, the Commission has not been able to agree on a fair solution as regards the handling of your above-mentioned initial applications.

Taking into account the time that has elapsed since the registration of your initial applications and with a view to safeguarding the interests of good administration, the Commission consequently sees itself obliged to balance your possible interest in access against the workload resulting from the processing of your applications. This is in line with the case-law of the EU Courts⁹. The Commission has come to the conclusion that handling the full scope of your five initial applications, or of your proposal of 28 December 2019, would involve an excessive administrative burden that would be disproportionate with your possible interest in obtaining the requested documents.

Therefore, the Commission has proceeded to the unilateral restriction of the scope of your initial applications registered under GESTDEM 2019/7132, 2019/7134, 2019/7136, 2019/7137 and 2019/7138, so as to bring it down to a more manageable number of documents. It has decided, per the Commission's second fair solution proposal of 7 January 2020, to handle 30 documents covered by your requests, namely the 30 confirmatory decisions, excluding their annexes, which were last adopted in the year 2018. These documents, including their detailed references, are listed in annex I of 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:

- wide partial access is granted to documents 1, 3-12, and 14-30, subject only to the redaction of personal data in accordance with Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001;
- partial access is granted to documents 2 and 13, subject to the redaction of personal data in accordance with Article 4(1)(b) (protection of privacy and the integrity of the individual), and 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.

The reasons for the above-mentioned redactions in the requested documents are set out below.

⁹ Judgment of the Court of Justice of 2 October 2014, *Guido Strack v Commission*, C-127/13, EU:C:2014:2250, paragraphs 26-28.

2.1. Protection of privacy and the integrity of the individual

Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data.

The documents to which you request access contain the following personal data:

- in all requested documents, the name and, where applicable, the contact information of the applicant that submitted the confirmatory application for access to documents and to whom the confirmatory decision was addressed;
- in documents 5 and 6, in particular, the name of the legal entity (law firm) associated with the applicant, which includes the name of a natural person, and which could allow, directly or indirectly, the identification of the applicant; and
- in documents 9 and 26, in particular, the names of other third party individuals who are not considered as public figures acting in their public capacity.

Article 9(1)(b) of the Data Protection Regulation¹⁰ does not allow the transmission of these personal data, except if you establish 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 subjects might be prejudiced. In your request, you do not put forward arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, I 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.

2.2. 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 2 and 13 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 2, the relevant undisclosed part also contains the area of business activity of the client represented, which could allow the identification of the organisation concerned.

¹⁰ 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.

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. I conclude, therefore, that access to the relevant parts of documents 2 and 13, disclosing the names 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.

Please note that Article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

4. PARTIAL ACCESS

As indicated above, wide partial access is granted to documents 1, 3-12, and 14-30, subject only to the redaction of personal data in accordance with Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001, and partial access is granted to documents 2 and 13 pursuant to Article 4(1)(b) (protection of privacy and the integrity of the individual) and 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

Yours sincerely,

Tatjana VERRIER

Enclosures: (30)