



EUROPEAN COMMISSION

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Belgium

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2018/3870**

Dear 

I refer to your e-mail of 6 September 2018, registered on the same day, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter ‘Regulation (EC) 1049/2001’).

1. SCOPE OF YOUR REQUEST

In your initial application of 19 July 2018, addressed to the Directorate-General for Employment, Social Affairs and Inclusion, you requested access to ‘a letter of 21 May 2007 from the Commission to the Maltese Government as well as the minutes of the meetings between the Commission services and the Maltese Government on the 16 July 2008 and on the 22 September 2009.’

The European Commission has identified the following documents as falling under the scope of your request:

1. A letter of 21 May 2007 from the Directorate-General for Employment, Social Affairs and Equal Opportunities to the Permanent Representation of the Republic of Malta to the European Union (document1, Ares(2018)4179952);

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L 145 of 31.5.2001, p. 43.

2. The minutes of the meeting between the European Commission services and the Maltese Government of 16 July 2008 (document 2, Ares(2018)4550078); and
3. The minutes of the meeting between the European Commission services and the Maltese Government of 22 September 2009 (document 3, Ares(2018)4550078).

In its first initial reply of 9 August 2018, the Directorate-General for Employment, Social Affairs and Inclusion granted access to document 1, subject only to the redactions of personal data in accordance with Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) 1049/2001.

As regards documents 2 and 3, on 27 July 2018, the Directorate-General for Employment, Social Affairs and Inclusion consulted the Maltese authorities in accordance with paragraphs 4(4) and 5 of Article 4 of Regulation (EC) 1049/2001 on the possible (partial) disclosure of those documents as they include the statements of the Maltese authorities concerning infringement proceedings 2005/4339 and 2005/4482 against Malta for the incorrect transposition of Council Directive 99/70/EC³ and Council Directive 97/81/EC⁴. By e-mail of 13 August 2018, the Maltese authorities opposed the disclosure of document 3, in particular paragraphs 7-9, on the basis of Article 4(2), second indent (protection of legal advice) of Regulation (EC) 1049/2001.

After considering their views, the General-Directorate for Employment, Social Affairs and Inclusion, in its second initial reply of 5 September 2018:

- granted wide partial access to document 2, 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) 1049/2001; and
- granted partial access to document 3, by redacting the parts falling under the exceptions protecting privacy and the integrity of the individual and legal advice, respectively, in Article 4(1)(b) and 4(2), second indent of Regulation (EC) 1049/2001.

In your confirmatory application, you request a review of this position only with regard to paragraphs 7-9 of document 3. The information contained in document 3 that constitutes personal data does not fall within the scope of your request. Consequently, its possible disclosure is not addressed in this confirmatory decision.

However, please note that, due to an administrative error, some personal data, consisting of the names and functions of representatives of the Maltese authorities reflected in document 3, page 1, were disclosed at the initial stage, even though the individuals concerned are not the main representatives of their respective administrative entities.

³ Council Directive 99/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, Official Journal L 175 of 10.7.1999, p. 43-48.

⁴ Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, Official Journal L 14 of 20.1.1998, p.9-14.

The European Commission did not intend to make this data public. In accordance with the Commission's usual administrative practice, such personal data are normally protected in accordance with Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) 1049/2001.

This error has been corrected in the version of the document that is enclosed with this decision.

I would therefore ask you to disregard the document in the version that was provided to you at the initial stage.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the relevant Directorate-General at the initial stage.

Following this review, the Secretariat-General re-consulted the Maltese authorities in accordance with Article 4(4) and (5) of Regulation (EC) 1049/2001 with a view to assessing whether an exception in paragraph 1, 2 or 3 of Article 4 of Regulation (EC) 1049/2001 could be applicable, as parts of document 3 reflect the opinion of the Maltese authorities.

According to Article 4(4) of Regulation (EC) 1049/2001, 'as regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed.' According to Article 4(5) of Regulation (EC) 1049/2001, 'a Member State may request the institution not to disclose a document originating from that Member State without its prior agreement'.

On 8 November 2018, the Maltese authorities agreed to the disclosure of document 3, 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) 1049/2001.

Taking into account the positive opinion on disclosure expressed by the Maltese authorities, I can inform you that access to document 3 is granted, 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) 1049/2001.

The reasons for the above-mentioned redactions, with which you explicitly agree in your confirmatory application, are set out in the initial decision.

3. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

*For the Commission
Martin SELMAYR
Secretary-General*



Enclosures: (1)