



EUROPEAN COMMISSION  
SECRETARIAT-GENERAL

Directorate C - Transparency, Efficiency & Resources  
SG.C.1-Transparency, Document Management & Access to Documents

Brussels  
SG.C.1/CS/ cr -

*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,

We refer to your e-mails sent to the European Commission on 9 December 2019 in which you make five requests for access to documents, registered under the above-mentioned reference numbers.

In your applications, you request access to all decisions on confirmatory applications adopted by the Commission in 2014,<sup>1</sup> 2015,<sup>2</sup> 2016,<sup>3</sup> 2017<sup>4</sup> and 2018.<sup>5</sup>

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<sup>1</sup> Registered under reference number GESTDEM 2019/7138.

<sup>2</sup> Registered under reference number GESTDEM 2019/7137.

<sup>3</sup> Registered under reference number GESTDEM 2019/7136.

<sup>4</sup> Registered under reference number GESTDEM 2019/7134.

<sup>5</sup> Registered under reference number GESTDEM 2019/7132.

On 9 December 2019, the Commission sent you a message acknowledging receipt of your above-mentioned requests, by which it informed you that your applications concern a very large number of documents, which need to be assessed individually. It also informed you that such detailed analysis cannot be carried out within the normal time limits set out in Article 7 of Regulation (EC) No 1049/2001. Therefore, the Commission invited you to reduce the scope of your requests to a limited number of documents per year, possibly by including only the policy area that is of interest to you, in order to enable the treatment of your requests within the extended deadline of 15 + 15 working days.

By your e-mail of 13 December 2019, you replied to the Commission by requesting it to clarify the reasonable solutions that it proposes.

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 documents,<sup>6</sup> 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.

This yields a result of 1.269 decisions on confirmatory applications, enclosing their annexes, namely the documents forming part of these decisions and to which full or partial access is granted. **The exact number of annexes cannot be determined** without a very detailed assessment of all these decisions. With a view of providing you, by way of analogy, with an estimation of the volume of documents, please note that, in a recent case of an initial application requiring the assessment of 8 identified decisions on confirmatory applications, the resulting number of documents actually assessed, including the annexes to the confirmatory decisions, reached a total number of 73 documents.

Due to the wide scope of your request and the estimated very high number of documents and pages under review, 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.

Indeed, according to our first, preliminary estimates of the workload for the treatment of your request (review of at least 1.269 decisions on confirmatory applications, each of which may enclose a varying number of annexed documents), and taking into account the performance of other tasks by the staff concerned, the handling of 10 documents would take approximately 30 working days,<sup>7</sup> covering the following steps:

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<sup>6</sup> COM(2019) 356 final

<sup>7</sup> Taking into account other applications for access to documents and other tasks that the staff concerned are likely to have to deal with during the same period.

- 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 reply;
- preparation of the e-signatory of the file;
- formal approval of the draft decisions by the hierarchy of the Secretariat-General; and
- final check of the documents to be released and dispatch of the replies.

It follows that, according to our above first 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.

In this context, I would like to stress that the corresponding resources cannot be allocated to handle your request, so as to safeguard the interests of good administration and to ensure the proper handling of applications originating from other applicants.

Regulation (EC) No 1049/2001 provides for a possibility to confer with applicants in order to find a fair solution when an application relates to a very long document or concerns a very large number of documents. Article 6(3) of this regulation provides that in the event of an application relating to a very long document or to very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution.

In accordance with the case law of the EU Courts, such a solution can only concern the content or the number of documents applied for, not the deadline for replying.<sup>8</sup> This means that the scope of the request must be reduced in a way that would enable its treatment within the extended deadline of 15 + 15 working days.

Moreover, it appears that you made a very wide-scoped request (all confirmatory decisions for the years 2014-2018) by introducing parts of it as seemingly separate requests. In this respect, Article 6(3) of Regulation (EC) No 1049/2001 may not be evaded by splitting an application into several, seemingly separate, parts.<sup>9</sup>

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<sup>8</sup> Judgment of the Court of Justice of 2 October 2014, *Guido Strack v Commission*, C-127/13, EU:C:2014:2250, paragraphs 26-28.

<sup>9</sup> Judgment of the General Court of 10 December 2010, *Ryanair v Commission*, T-494/08, EU:T:2010:511, paragraph 34.

As stated by the EU Courts, the Commission needs to respect the principle of proportionality and ensure that the interest of the applicant for access is balanced against the workload resulting from the processing of the application for access in order to safeguard the interests of good administration.<sup>10</sup>

With a view to reaching a fair solution, in the meaning of Article 6(3) of Regulation (EC) No 1049/2001, concerning the handling of your initial requests registered under reference numbers GESTDEM 2019/7132, 2019/7134, 2019/7136, 2019/7137 and 2019/7138, and to respect the time-limits set by Regulation (EC) No 1049/2001, **we consequently propose to deal with two documents falling within the scope of each of your requests, i.e., per year concerned.**

We would therefore kindly ask you to please specify the objective of your request and your specific interest in the requested documents in order to identify the two documents that are most relevant to you. For example, you may specify your interest in receiving confirmatory decisions dealing with a specific exception of Article 4(1) or (2) of Regulation (EC) No 1049/2001, or the last adopted decision(s) per year of reference.

**Alternatively, we could propose to deal with an overall number of ten documents falling within the scope of your request as limited to one specific year.** For instance, you could indicate your interest in receiving confirmatory decisions adopted solely in the year of 2018. In this case, we would likewise kindly ask you to indicate your specific interest in the requested documents in order to identify the ten documents that are most relevant to you by specifying, indicatively, your interest in receiving confirmatory decisions dealing with a specific exception of Article 4(1) or (2) of Regulation (EC) No 1049/2001, or the last decisions adopted in the year concerned.

In order to enable us to provide you with a reply as soon as possible, we would ask you for a swift response to our proposal for a fair solution within five working days at the latest, by email to [Sg-Acc-Doc@ec.europa.eu](mailto:Sg-Acc-Doc@ec.europa.eu).

In the absence of a reply within five working days, we we will unilaterally restrict the scope of your application to those parts that can be dealt with within the extended deadline of 30 working days, counting from the registration of your applications.<sup>11</sup>

Thank you in advance for your cooperation.

Yours sincerely,

Maria OLIVAN AVILES  
Head of Unit

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<sup>10</sup> Judgment of the Court of First Instance of 13 April 2005, *Verein für Konsumenteninformation v Commission*, T-2/03, EU:T:2005:125, paragraph 102.

<sup>11</sup> *Guido Strack v Commission*, cited above, paragraph 27.