



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

Director-General

Brussels,
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Thomas Spekschoor
(NOS Dutch public tv and radio)
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1040 Brussel

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Subject: Your application for access to documents – Ref GestDem No 2020/605

Dear Mr Spekschoor,

We refer to your request dated 24 January 2020 in which you make a request for access to documents under the above-mentioned reference number to “*all communication between the Netherlands and the European Commission on Directive 2014/45/EU since 2014.*”

On 20 February 2020, we asked you to clarify your request, as the description given in your application does not enable us to identify concrete documents, which would correspond to your request. You responded on 06 March 2020 clarifying that you would like to have access to the documents related to the infringement procedure against the Netherlands concerning Directive 2014/45/EU. In particular, you would like to receive the letter of Formal Notice, sent to the Netherlands in July 2017, the answers that have followed from the Netherlands, and further letters by the Commission. You would also like to have access to the minutes of any meetings following the letter of Formal Notice.

Your application concerns the request for access to documents regarding the infringement case NIF 2017/ 0399.

Having examined the document requested under the provisions of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents¹, I regret to inform you that your application cannot be granted, as disclosure is prevented by the exception laid down in Article 4(2), third indent of this Regulation.

¹ OJ L 145, 31.5.2001, p. 43.

This provision establishes that *"The institutions shall refuse access to a document where disclosure would undermine the protection of (...) the purpose of inspections, investigations and audits (...) unless there is an overriding public interest in disclosure."*

The exception foreseen in Article 4(2), third indent of the above mentioned Regulation applies in particular to infringement procedures under Article 258 TFEU.

As the law stands, the Court has recognised that the documents concerning an infringement procedure during its pre-litigation stage² enjoy a general presumption of confidentiality as long as the procedure is ongoing³.

The procedure NIF 2017/ 0399 has not yet been filed.

The complete or partial disclosure of the documents requested would undermine the protection of the purpose of the ongoing investigation. The disclosure of the documents at this point in time would affect the climate of mutual trust between the authorities of the Member State and the Commission, which is required to enable them to resolve the case without having to refer it to the Court of Justice.

The exceptions laid down in Article 4(2) of Regulation (EC) No 1049/2001 apply to all these documents, unless there is an overriding public interest in disclosure of the documents.

In this regard, the detailed review of the documents led us to the conclusion that there is no overriding public interest in their disclosure. On the contrary, we believe that it is in the public interest to settle this dispute promptly and to find solutions with the Member State concerned in an atmosphere of mutual trust.

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 Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/327
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

(e-signed)
Henrik HOLOLEI

² Judgment in *LPN and Finland v Commission*, C-514/11 P and C-605/11 P, EU:C:2013:738, p. 65.

³ Judgment in *ClientEarth / Commission*, C-612/13 P, ECLI:EU:C:2015:486, p. 77.