



EUROPEAN COMMISSION

Brussels, 10.4.2019
C(2019) 2948 final

[REDACTED]
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Tirana, Albania

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) NO 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2018/640**

Dear [REDACTED],

I refer to your e-mail of 5 June 2018, registered on 13 June 2018, 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) No 1049/2001').

1. SCOPE OF YOUR REQUEST

In your initial application of 30 January 2018, addressed to the Directorate-General for Neighbourhood and Enlargement Negotiations, you requested access to 'the market survey conducted by the Central Finance and Contracts Unit of the Ministry of Science, Industry and Technology in Turkey in its capacity of Contracting Authority, for tender procedure EuropeAid/131326/SUP/TR'.

At the initial stage, the European Commission has identified the document requested, originating from a third country, as falling under the scope of your request.

In accordance with Article 4(4) of Regulation (EC) No 1049/2001, with regard to 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. In accordance with this provision, the Directorate-General for Neighbourhood and Enlargement Negotiations, consulted the

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

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

third party author of the document (the Ministry of Science, Industry and Technology of the Republic of Turkey), who objected to the disclosure. In its initial reply of 5 June 2018, taking into account the position of the author, the Directorate-General for Neighbourhood and Enlargement Negotiations refused access to the document on the basis of Article 4(3) (protection of the institution's decision-making process) of Regulation (EC) No 1049/2001.

In your confirmatory application, you request a review of this position.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

The document identified as falling under the scope of your request originates from a third party.

Under the provisions of Article 4(4) of Regulation (EC) No 1049/2001 and with a view to taking into account the arguments put forward in your confirmatory application, a renewed consultation of the third party author was initiated by the Secretariat-General on 1 August 2018 and 19 September 2018, respectively.

The Turkish authorities maintained their opposition to the disclosure of the document, based on the exception invoked already at the initial stage, adding that disclosure of this document could also potentially undermine commercial interests and intellectual property rights of their 'contracting private company' that participated in the preparation of the document requested.

Having carried out a detailed examination of the document requested, taking into account the result of the third party consultations at initial and confirmatory levels, I am pleased to inform you that full access is granted to this document. The reasons given by the Turkish authorities for their objection are indeed not capable of justifying the application of the exceptions provided for in Article 4(3) and Article 4(2), first indent of Regulation (EC) No 1049/2001.

Please note, however, that the actual transmission of the document is subject to the absence of a request by the third party originator for interim measures, as referred to in paragraph 3.

3. DISCLOSURE AGAINST THE EXPLICIT OPINION OF THE AUTHOR

According to Article 5(5) and (6) of the detailed rules of application of Regulation (EC) No 1049/2001³, '[t]he third-party author consulted shall have a deadline for reply which shall be no shorter than five working days but must enable the Commission to abide by

³ Commission Decision of 5 December 2001 amending its rules of procedure (notified under document number C(2001) 3714), Official Journal L 345 of 29.12.2001, p. 94.

its own deadlines for reply. In the absence of an answer within the prescribed period, or if the third party is untraceable or not identifiable, the Commission shall decide in accordance with the rules on exceptions in Article 4 of Regulation (EC) No 1049/2001, taking into account the legitimate interests of the third party on the basis of the information at its disposal. If the Commission intends to give access to a document against the explicit opinion of the author, it shall inform the author of its intention to disclose the document after a ten-working day period and shall draw his attention to the remedies available to him to oppose disclosure.’

Since the decision to grant access is taken against the objection of the third-party author expressed at initial and confirmatory levels, the European Commission will inform the Turkish authorities of its decision to give access to the document requested. The European Commission will not grant such partial disclosure until a period of ten working days has elapsed from the formal notification of this decision to the third party author, in accordance with the provisions mentioned above.

This time period will allow the third party author to inform the European Commission whether it intends to object to the disclosure using the remedies available to it, i.e. an application for annulment and an application for interim measures before the General Court. Once this period has elapsed, and if the third-party author has not signalled its intention to avail itself of the remedies at its disposal, the European Commission will forward the redacted document to you.

4. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may bring proceedings before the General 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)