



EUROPEAN COMMISSION

Secretariat-General

Directorate C – Transparency, Efficiency & Resources

The Director

Brussels
SG.C.1/TB/

By registered mail with AR

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Subject: Your application for access to documents – GESTDEM 2020/4739

Dear Mr Hillebrandt,

I refer to your e-mail of 5 August 2020, registered on the same day, in which you make a request for access to documents, under the above-mentioned reference number.

1. SCOPE OF YOUR REQUEST

You request access to, I quote:

‘The 61st to the 90th final decisions by the European Commission in confirmatory application procedures under Regulation 1049/2001 issued in 2019’ (hereafter the ‘requested documents’).

In your request, you specified that you request access to the requested documents for the purposes of academic research. You further added that any personal data is explicitly excluded from the scope of your request and you agree any related redactions in the documents. Moreover, you reminded that you were interested in gaining access only to the documents containing the European Commission decision concerning the confirmatory application. Thus, the enclosures of the requested documents do not fall within the scope of your request. You also indicated that wherever the English version of the requested documents is available, you limit your access request to that version only. Finally, you referred to the fair solution agreement you and the European Commission agreed earlier, when your previous and essentially similar requests, registered under GESTDEM 2020-2451 and 2020-2853, had been processed.

The identified documents falling within the scope of your request, including their detailed references, are listed in annex I of this reply.

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

I can inform you that:

- full access is granted to documents 61-63 and 65-90; and
- partial access is granted to document 64 subject to the redaction 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, for the reasons set out below.

Personal data within the meaning of the Data Protection Regulation¹ has been redacted by default in the requested documents as falling outside the scope of your request.

2.1. 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.

Document 64 contains 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.

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 person concerned.

I conclude, therefore, that access to the relevant parts of document 64 disclosing the name of the client of this legal person, 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.

¹ 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.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exception laid down in the first indent of Article 4(2) of Regulation (EC) No 1049/2001 must be waived if 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 application, 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.

4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, I have considered the possibility of granting (further) partial access to the documents requested.

As indicated above, full access is granted to documents 61-63 and 65-90, and partial access is granted to document 64 pursuant to redactions based on 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 faithfully,

Tatjana Verrier
Director

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