



EUROPEAN COMMISSION

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C(2019) 5338 final

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Greece

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE  
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under  
Regulation (EC) No 1049/2001 - GESTDEM 2019/305**

Dear [REDACTED],

I refer to your letter of 21 March 2019, 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 documents<sup>2</sup> (hereafter ‘Regulation (EC) No 1049/2001’).

**1. SCOPE OF YOUR REQUEST**

In your initial application of 17 January 2019, addressed to the Directorate-General for Neighbourhood and Enlargement Negotiations you requested access to:

‘Copy of the EURALIUS report on/assessment of the Albanian law on property, finalised in/around August 2018, the report is mentioned in the following article (in Albanian): <https://www.reporter.al/raporti-i-euraliuslegjislacioni-shqiptar-i-prones-shkel-te-drejtat-e-njeriut/> (see also previous request regarding the same document registered under Ref GestDem No 2018/5079).’

The European Commission has identified the Report on the Protection of Property in Albania (hereafter ‘the property rights report’) as falling under the scope of your request.

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<sup>1</sup> Official Journal L 345 of 29.12.2001, p. 94.

<sup>2</sup> Official Journal L 145 of 31.5.2001, p. 43.

In its initial reply of 1 March 2019, the Directorate-General for Neighbourhood and Enlargement Negotiations refused access to the requested document, invoking the exceptions of Article 4(1)(a) (protection of public interest as regards international relations) and Article 4(2), first indent (protection of commercial interests) of Regulation (EC) No 1049/2001.

Through your confirmatory application you request a review of this position. You underpin your request with detailed arguments, which I will address in the corresponding sections below.

## **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.

Since the document originates from a third party, the Secretariat-General consulted the EURALIUS consortium coordinator, the German Foundation for International Legal Cooperation, in accordance with Article 4(4) of Regulation (EC) No 1049/2001 with a view to assessing whether any exception of Article 4 of Regulation (EC) No 1049/2001 could be applicable. In their reply to the consultation, EURALIUS agreed to the partial disclosure of the requested report, based on the exceptions of Article 4(1)(a) (protection of public interest as regards international relations) and Article 4(2), second indent (protection of legal advice and court proceedings) of Regulation (EC) No 1049/2001.

Following this review and after taking into account the result of the consultation, I can inform you that partial access is granted to the requested report. With regard to the redacted parts of the concerned document, they are covered by the exceptions of Article 4(1)(a) (protection of public interest as regards international relations) and Article 4(2), second indent (protection of legal advice and court proceedings) of Regulation (EC) No 1049/2001.

### **2.1. Protection of the public interest as regards international relations**

Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001 provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] the public interest as regards [...] international relations'.

With regard to this provision, the Court of Justice has acknowledged in *In't Veld* judgment that the institutions enjoy 'a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by those exceptions could undermine the public interest'.<sup>3</sup>

Albania is a candidate country to the European Union following the European Council conclusions of June 2014. As a candidate country, Albania is actively engaged in

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<sup>3</sup> Judgment of the Court of Justice of 3 July 2014, *Council v In't Veld*, C- 350/12 P, EU:C:2014:2039, paragraph 63.

carrying out various reforms in order to achieve the standards required for European Union membership.

In this context, the European Commission awarded several grant contracts to finance actions which focus on supporting the Albanian institutions to consolidate their justice system following a comprehensive justice reform. A justice reform is a key criterion in the accession negotiations, stressed by the Council of the European Union in the conclusions of the General Affairs Council of 26 June 2018 on Enlargement and Stabilisation and Association Process<sup>4</sup>. The justice reform is at a critical phase of implementation. Its objective to fight corruption and depoliticise the justice system is by its very nature highly sensitive.

The property rights report was prepared by the consortium awarded the grant for 'Consolidation of the Justice System in Albania (EURALIUS V)'. It was addressed to the European Commission and to the beneficiary of the project - the Albanian authorities - for their internal use and consideration, and was not intended to be shared in public. Part of the role of EURALIUS is to provide legal advice on ongoing legislative and legal interpretation issues with the view to allow the Albanian authorities to have an overview of the issues related to the property rights reform, so as to enable them to evaluate the advice provided by EURALIUS and finally take the necessary decisions relating to this reform. For this process to be effective, it is therefore essential that the EU and its technical assistance provider EURALIUS maintain a constant, frank and open dialogue, based on trust, with the stakeholders and the Albanian authorities.

This report contains analyses and comparison of the legal framework and the practice concerning property rights (including restitution, compensation, legislation, expropriation and registration aspects) in Albania with a number of other legal systems (for examples in Lithuania, Serbia, Poland, Croatia and Georgia). It describes challenges still faced by the Albanian property rights system and proposes actions, activities and steps to be taken in that regard. The final decision on any property rights reform is reserved to the Albanian authorities who need to be able to deliberate free from external pressure and criticism. Full public disclosure of the EURALIUS report would put under strain the European Union's international relations with the Albanian authorities. Such disclosure would be perceived by the Albanian authorities not only as a breach of trust but also as an action undermining their authority to take the final decision on the property rights. In this context, it is to be underlined that EURALIUS, which is in constant contact with the Albanian authorities, repeatedly opposed disclosure of the requested report.<sup>5</sup> The General Court has acknowledged that 'the way in which the authorities of a third country perceive the decisions of the European Union is a component of the relations established with that third country'.<sup>6</sup>

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<sup>4</sup> <https://www.consilium.europa.eu/media/35863/st10555-en18.pdf>

<sup>5</sup> Judgment of the General Court of 12 May 2015, *Jurašinović v Council*, T-658/14, EU:T:2015:766, paragraph 35.

<sup>6</sup> Judgment of the General Court of 27 February 2018, Case T-307/16, *CEE Bankwatch Network v European Commission*, EU:T:2018:97, paragraph 90.

Were the European Commission to provide public access to the withheld parts of the requested report, the environment of mutual trust necessary for shedding light on aspects which could be improved, thus supporting the property rights reform, would be negatively affected.<sup>7</sup> The European Union would be deprived of valuable insights which would be useful for its bilateral dialogue with the Albanian authorities regarding the reform of its legal system. Furthermore, the willingness of the Albanian authorities to communicate such sensitive but necessary information for the European Union's assessments and deliberations would be reduced.

In this case, full public disclosure against the expressed opposition of the EURALIUS consortium of the property rights report would undermine the effectiveness of the EU action regarding the implementation of the reform efforts, would negatively affect the European Union's relations with Albania and undermine the mutual trust, which is paramount for the ongoing accession negotiations.

Therefore, access to the withheld parts of the requested document would undermine the protection of public interest as regards international relations protected by Article 4(1)(a), third indent of Regulation (EC) No 1049/2001, and that access has to be refused on that basis.

## **2.2. Protection of legal advice and court proceedings**

Article 4(2), second indent of Regulation (EC) No 1049/2001 provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: [...] court proceedings and legal advice.'

In its judgement in case T-84/03, the Court of First Instance<sup>8</sup> underlined that the exception provided for in Article 4(2), second indent protects two distinct interests: court proceedings and legal advice<sup>9</sup>. In the case at hand, the refusal of access to the documents concerned is based on a need to protect legal advice.

It needs to be recalled that the concept of the 'legal advice', as well as the applicability of the exception protecting it, was interpreted by the case law of EU Court. Indeed, in its judgment in Case T-755/14, the General Court took the position that legal advice is 'advice relating to a legal issue, regardless of the way in which that advice is given'<sup>10</sup>.

In the above-mentioned judgment, the General Court also explicitly underlined that 'it is irrelevant, for the purposes of applying the exception relating to the protection of legal advice, whether the document containing that advice was provided at an early, late or final stage of the decision-making process'<sup>11</sup>. Furthermore, according to General Court's

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<sup>7</sup> Judgment of the General Court of 11 July 2018, *ClientEarth v Commission*, T-644/16. EU:T:2018:429, paragraph 47.

<sup>8</sup> Currently: the General Court.

<sup>9</sup> Judgment of the Court of first Instance of 23 November 2004 in case T-84/03, *Turco v Council*, EU:T:2004:339, paragraph 65.

<sup>10</sup> Judgment of the General Court of 15 September 2016 in case T-755/14, *Herbert Smith Freehills v Commission*, EU:T:2016:482, paragraph 47.

<sup>11</sup> *Idem*.

reasoning ‘there is nothing in the wording of the second indent of Article 4(2) of Regulation No 1049/2001 to support the conclusion that that provision concerns only advice provided or received internally by an institution’.<sup>12</sup>

The property rights report contains the views and the results of the analysis carried out by the EURALIUS project team of the particular aspects of property rights. It includes analysis and legal opinions in matters of a sensitive nature that were being analysed and proposed to the Albanian authorities in the context of property reform legislation, namely the restitution and compensation, the legalization, expropriation and registration. Disclosure of the withheld parts of the requested document would clearly have a serious impact, both on the EURALIUS consortium’s capacity to assist the Albanian authorities and the European Commission in this and future matters, and on the Albanian authorities’ interest in seeking and receiving frank and objective advice from the EURALIUS consortium. The EURALIUS consortium and the Albanian authorities would be exposed to undue external pressure in case of its premature disclosure.

You argue that similar documents have been, partly or fully, disclosed in the past. However, each request needs to be assessed on its own merits and on the basis of the context at that specific time, which explains the assessment made in this case for the reasons explained above.

In light of the above, access to the withheld parts of the requested document must be denied on the basis of the exception laid down in Article 4(2), second indent of Regulation (EC) No 1049/2001.

### **3. PARTS FALLING OUTSIDE OF YOUR REQUEST**

In your confirmatory application, you request additionally access to ‘a copy of the EURALIUS’s V opinion referred to in your letter, as well as the outcome of the internal investigation that was most assuredly launched into the leaking of a draft of the requested documents to the local press’.

As a confirmatory application can only review an initial decision with regard to the documents requested at the initial stage, this part of your requests falls outside the scope of the present Decision.

This part of your request will consequently be registered as a separate initial request for access to documents and attributed to the Directorate-General for Neighbourhood and Enlargement Negotiations.

### **4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exceptions laid down in 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.

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<sup>12</sup> *Idem*, paragraph 48.

In your confirmatory application, you do not put forward any reasoning pointing to an overriding public interest in disclosing the documents requested.

Nor have I been able to identify any public interest capable of overriding the public and private interests protected by Article 4(2), second indent (protection of legal advice and court proceedings) of Regulation (EC) No 1049/2001.

Please note also that Article 4(1)(a) of Regulation (EC) No 1049/2001 does not include the possibility for the exceptions defined therein to be set aside by an overriding public interest.

## **5. PARTIAL ACCESS**

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

As explained above, partial access is granted to the property rights report. The withheld parts are covered by the exceptions provided for in Article 4(1)(a), third indent and Article 4(2), second indent of Regulation (EC) No 1049/2001.

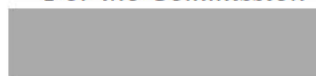
## **6. MEANS OF REDRESS**

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*



Enclosure: (1)