



EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels, 24. 02. 2014

By e-mail

Mr Erik Wesselius
ask+request-1174-
92542987@asktheeu.org

Subject: Request for access to documents

Ref.: Your e-mail of 4 February 2014, registered as GestDem 2014/630

Dear Mr Wesselius,

I refer to your e-mail mentioned above requesting, on behalf of your client Arizona Chemicals, access to documents under Regulation (EC) N° 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents¹.

In particular, you request the *legal opinion of the European Commission's Legal Service that was used in the discussions in the High Level Working Group on the review of the Transparency Register that took place in July-December 2013*.

After verification of the Legal Service's files, the document with reference Ares(2013)3191712 has been identified as matching your request. This document is a note entitled *Mandatory register for lobbyists: legal basis* which has been drawn up by the European Commission's Legal Service following a request of the cabinet of the Vice-President in charge of the interinstitutional relations on the issue for the establishment of a potential mandatory register of lobbyists.

Having carefully examined the identified legal opinion, I have come to the conclusion that partial access can be granted to those parts that are not covered by any of the exceptions foreseen at Article 4 of Regulation 1049/2001.

Accordingly, please find enclosed a copy of this legal opinion in its expunged version. I must however remind you that it cannot be reproduced or disseminated for commercial purposes without prior consent given by the Commission.

¹ Official Journal L 145, 31.05.2001, page 43.

As regards the remaining parts of this document, I regret to inform you that they cannot be disclosed since they are covered by the exceptions provided for in Article 4(2) second indent ("*the protection of legal advice*")² and Article 4(3) second paragraph ("*the protection of the decision-making process*")³ of Regulation 1049/2001.

At the outset, it should be noted that this legal opinion does not relate to any legislative activity. Indeed, this legal opinion has been rendered by the Legal Service on 2 October 2013 in reply to a request made by the cabinet of the Vice-President in charge of the interinstitutional relations on the possibility to implement mandatory rules on registration of lobbyists in a common register. So the issue discussed is of a high sensitive nature.

In this respect, I would like to point out that the Commission has not reached a conclusion on the legal basis to be given in case of the adoption of mandatory rules for registration of lobbyists.

In addition, I would like first to stress on the particularly large scope of the legal opinion concerned by your request. Indeed, this legal opinion contains, on the one hand, a deep analysis of the possible legal basis to be given to eventual mandatory rules for registration of lobbyists and, on the other hand, it gives a general interpretation on the application of Articles 298 and 352 of the Treaty on the functioning of the European Union ("TFEU").

Therefore, the legal issues discussed in this legal opinion are relevant not only in the context of the possible mandatory rules for the concerned register but may also be relevant and subject of discussion in the framework of futures questions where the interpretation of the concerned Articles of TFEU would arise.

In these circumstances, full disclosure of the legal opinion at stake would have adverse consequences both for the Legal Service's capacity to assist the Commission and its services in the matter concerned without being confronted with its previous positions on the same matter and for the Commission to seek legal advice and receive frank, objective and comprehensive advice. This, in turn, would seriously undermine the Commission's capacity to take future decisions on the matter. Therefore, the requested legal opinion is also covered by the exception provided for in Article 4(3) second paragraph ("*the protection of the decision-making process*") of Regulation 1049/2001.

Finally, it has to be underlined that the Commission has not taken any position on the eventual mandatory character of the said register.

So, in the light of the foregoing, I consider that the refused parts of the identified legal opinion must remain confidential.

Pursuant to Article 4(2) and (3) of Regulation 1049/2001, the exceptions to the right of access must be waived if there is an overriding public interest in disclosing the requested documents. I understand the interest of transparency in that it enables citizens to

² "*The institutions shall refuse access to a document where disclosure would undermine the protection of: [...] legal advice [...] unless there is an overriding public interest in disclosure*".

³ "*Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure*".

participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system.

However, in the present case, for the reasons explained above, taking into account the sensitive nature of the legal issues addressed in the legal opinion concerned and its large scope, I consider that the interest in transparency do not outweigh the public interest of the Commission and its services to receive frank, objective and comprehensive legal advice and the need to protect that institution's decision-making process, as well as its rights of defence.

Should you wish this position to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretary-General at the address below.

The Secretary-General will inform you of the result of such review within 15 working days from the date of registration of your request. You will either be given access to the document or your request will be rejected, in which case you will be informed of what further action is open to you.

All correspondence should be sent to the following address:

The Secretary-General
European Commission
B-1049 BRUSSELS
e-mail: Sg-Acc-Doc@ec.europa.eu

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Luis Romero Requena', with a stylized, flowing script.

Luis ROMERO REQUENA

Enclosure: 1