Subject: Consultation pursuant to Regulation (EC) No 1049/2001 concerning request for access to document [INSERT CASE NUMBER]

Dear Mr/Ms Xxxxxx,

I am writing in relation to a confirmatory application for access to documents that has been made to the European Commission under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents \(^1\) concerning the above mentioned case.

On [INSERT DATE OF REGISTRATION OF INITIAL REQUEST], the applicant asked the European Commission for access to [pls cite from the applicant’s request putting the text in ‘…’].

The European Commission identified the following document(s) originating from your authorities:

- [Title, author, addressee (if applicable), date, ref. Ares(2019) xxx] (‘document 1’), which includes the following annexes:
  - [Title, author, addressee (if applicable), date, ref. Ares(2019) xxx (if different from reference of main document)] (‘document 1.1’);
  - ……

As the document[s] originated from your authorities, and in accordance with Article 4(4) and (5) of the Regulation, the European Commission’s Directorate-General for [specify] consulted the [national] authorities as to [its/their] possible (partial) disclosure. …

In the context of that consultation [MS] … [explain what was the reply of the MS by referring to the specific exception(s) of Article 4, invoked by the MS]. The

Directorate-General for [specify] took into account the reply of the [national] authorities and refused/granted partial access to (parts of) the document(s)…. [based on Article …].

On (INSERT DATE OF REGISTRATION OF CONFIRMATORY REQUEST), the European Commission’s Secretariat-General received a confirmatory application for access, in which the applicant asked for a separate review of the initial position taken by the Directorate-General for [specify].

When it receives a confirmatory request for access submitted in accordance with Regulation (EC) No 1049/2001, the Secretariat-General conducts an independent review of the initial reply from the Directorate-General in question.

The general principle of the Regulation is that, in response to a request, the widest possible access should be granted to any document held by an EU institution. The institution can refuse disclosure of (part of) the requested document(s) only where that would undermine the protection of a specific interest, as laid down in Article 4. The European Commission must conduct a thorough analysis of each document to which access is requested.

At the end of this analysis, the European Commission issues a confirmatory decision. This is a legal act that may be challenged in the EU courts. It may also be the subject of a complaint by the applicant to the European Ombudsman.

Under Article 4(4) and (5) of Regulation (EC) No 1049/2001, your opinion is required before the European Commission takes any decision concerning public access to documents originating from your country.

Following an assessment at first sight of the document[s] concerned, it appears that … [be as specific as possible as to what we intend to disclose, i.e. what our assessment of the documents concerned is: partial access/full disclosure and put forward the arguments justifying our view].

Should your authorities nevertheless wish to oppose the granting of full or partial disclosure of the document[s], they are invited to submit detailed arguments in the framework of Regulation (EC) No 1049/2001. To that end, we invite you to:

− redact those parts of the document[s] that should, in the view of the authorities, remain confidential in application of the Regulation; and
− specify the grounds in Article 4 on which the authorities base those redactions.

Given the binding time limits under Regulation (EC) No 1049/2001, I would be grateful if you could provide us as soon as possible — and in any case within five working days of receipt of this letter — with your authorities’ position as regards the document[s] in question [or: with the public version of the document[s] that can be released to the applicant].

Please bear in mind that when considering requests for access to documents, the European Commission can base its confirmatory reply only on Regulation (EC)
No 1049/2001 and cannot rely on the national laws of a Member State or a non-EU country. Also, in accordance with the jurisprudence of the Court of Justice of the EU, ‘Article 4(5) of Regulation (EC) No 1049/2001 cannot be interpreted as conferring on the Member State a general and unconditional right of veto, so that it could in a discretionary manner oppose the disclosure of documents originating from it and held by an institution’. Therefore, the final assessment of whether any of the exceptions in Article 4 are applicable remains with the European Commission.

Please note that documents partially and fully disclosed under Regulation (EC) No 1049/2001 are published on the Commission portal for access to documents.

[Option 1:]

If your reply is not received within the prescribed time limit, we will adopt a position in accordance with the rules laid down in Regulation (EC) No 1049/2001 while taking account of your authorities’ lawful interests on the basis of the information in our possession.]

[Option 2:]

If your reply is not received within the prescribed time limit, the European Commission will assume that parts [if possible, specify which parts we will disclose in the absence of a reply] of the document[s] in question contain no confidential information covered by the exceptions in Article 4([specify]) of Regulation (EC) No 1049/2001 and will therefore release those parts to the applicant in full.

If you have any questions, please contact case handler for this case: (INSERT E-MAIL ADDRESS OF CONFIRMATORY CASE HANDLER)

Please send your reply by email to the case handler, putting in copy Sg-Acc-Doc@ec.europa.eu, with the following reference in the title (INSERT CASE NUMBER)

Thank you in advance for your cooperation.

Yours sincerely,

María OLIVÁN AVILÉS
Head of Unit

Enclosure(s): [insert number]

---

2 Judgment of the Court of Justice of 18 December 2007, Kingdom of Sweden v Commission of the European Communities and Others, C-64/05 P, EU:C:2007:802, paragraph 75.