



EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels, 01.04.2016

Mr Andreas Pavlou
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BY E-MAIL AND REGISTERED MAIL WITH ACKNOWLEDGMENT OF RECEIPT

Subject: Your application for access to documents – Ref GestDem No 2016/1097

Dear Mr Pavlou,

I refer to your e-mail mentioned above by which you request access, under Regulation (EC) N° 1049/2001¹, to the note of the Legal Service on Mandatory register for lobbyists, document with reference Ares(2013)3191712.

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.

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

¹ Regulation (EC) N° 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.05.2001, page 43).

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*".

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. However, to assess the actual system and to inform the preparation of its intended proposal for an Interinstitutional Agreement on a mandatory Transparency Register, the European Commission has launched a public consultation (from 1 March 2016 until 1 June 2016).

So, in the light of the foregoing, I consider that the refused parts of the requested 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 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,



Luis ROMERO REQUENA

Enclosure: 1