

EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels,

by e-mail

Ms Luisa Izuzquiza
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Subject: Request for access to documents

Ref.: Your request of 15 October 2017 registered under reference GestDem 2017/6016

Dear Ms Izuzquiza,

I refer to your request for access to documents, under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹. Your request concerns the documents filed by all Member States in twenty five cases.

By e-mail of 27 October 2017, the Legal Service informed you that:

- concerning cases C-520/15, C-407/15, C-380/15, C-325/15, C-118/15 and C-32/15P, the Court had notified them to the Commission together with the Order of inadmissibility (C-325/15), the Order of the Court's lack of jurisdiction (cases C-520/15, C-407/15 and C-380/15) or the Order of withdrawal (C-118/15 and C-32/15P). Consequently, the Legal Service is not in possession of any document falling within the scope of the request².
- regarding cases C-487/15P, C-396/15P, C-346/15P and C-251/15P, the Commission did not intervene in them. Therefore, the Legal Service does not possess copies of the requested documents either.

¹ OJ L 145, 31.05.2001, page 43.

² Article 2(3) of Regulation (EC) No 1049/2001 states that *"This Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession [...]"*.

With regards to the 15 remaining cases, the Legal Service, by the referred e-mail of 27 October 2017, proposed to you a fair solution under article 6(3) of Regulation (EC) No 1049/2001³. On 30 October 2017 you agreed to have your request processed in six consecutive batches.

The present reply refers to the first batch of your request concerning the documents filed by all Member States in cases C-601/15PPU⁴ and C-445/15⁵.

The Court of Justice has notified to the European Commission the submissions made to the Court by the following Member States:

Case C-601/15PPU (language of the proceedings: Dutch)

1. the Dutch Government,
2. the Polish Government
3. the Czech Government,
4. the German Government
5. the Belgian Government
6. the Italian Government and
7. the Cypriot Government.

Case C-445/15 (language of the proceedings: English)

8. the Dutch Government and
9. the French Government.

In accordance with article 4(4) of Regulation (EC) No 1049/2001, the Commission has consulted the concerned Member States on the disclosure of their documents. I would like to inform you that all governments have agreed to their disclosure. Accordingly, please find attached the requested documents in the language versions which have been notified to the Commission by the Court i.e. in case C-601/15PPU the language of the respective Members States, the language of the proceedings and French; in case C-445/15 the language of each Member State. Indeed, in the latter case the Member States' submissions were transmitted to the Commission together with the Order removing the case from the Register of the Court.

Please note that personal data has been expunged. More specifically, the names of the Court's officials, the handwritten signatures, as well as the initials of the Court's lawyers-linguists have been redacted. This information must be protected under the exception provided for in Article 4 (1)(b) of Regulation (EC) 1049/2001 ("*protection of personal data*")⁶, in accordance also with the European Union legislation regarding the protection of personal data.

Indeed, when access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable⁷. According to Article 8(b) of Regulation 45/2001⁸, personal data shall only be transferred to recipients if they establish the necessity of having the data

³ "In the event of an application relating to a very long document or to a very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution".

⁴ Judgment of the Court of 15 February 2016 in case *J. N. v Staatssecretaris van Veiligheid en Justitie*, C-601/15PPU, ECLI: EU:C:2016:84.

⁵ Order of the Court of 5 February 2016 in *Nutricia Limited v Secretary of State for Health*, C-445/15, ECLI:EU:C:2016:106.

⁶ "The institutions shall refuse access to a document where disclosure would undermine the protection of: [...] (b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data".

⁷ Judgment of the Court of 29 June 2010 in *Commission v The Bavarian Lager Co. Ltd*, C-28/08 P, EU:C:2010:378.

⁸ OJ L 8, 12.1.2001, p. 1.

transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced. Those two conditions are cumulative.

I consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned.

If you wish to receive the expunged personal data, I invite you to provide us with arguments showing the need to have the personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data would be disclosed.

Please note that the exception of Article 4(1)(b) has an absolute character and does not envisage the possibility of demonstrating the existence of an overriding public interest.

REUSE OF THE DOCUMENTS

Please note that these documents were transmitted by the Court of Justice to the Commission in its capacity as participant to the Court proceedings at stake. They are disclosed for information only and cannot be re-used without the agreement of the originator, who holds a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

MEANS OF REDRESS


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 following address:

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/327
B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

The Secretary General will inform you of the result of this review within 15 working days from the date of registration of your request. You will either be given access or your request will be rejected in which case you will be informed of how you can take further action.

Yours sincerely,



Luis ROMERO REQUENA

Attachments: 21