



EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels,
Ms Luisa Izuzquiza
Access Info Europe
Cava de San Miguel 8
4° Centro E
28005 Madrid 7
Spain
[ask+request-4715-
a00a9f65@asktheeu.org](mailto:ask+request-4715-a00a9f65@asktheeu.org)

BY E-MAIL AND REGISTERED MAIL WITH ACKNOWLEDGMENT OF RECEIPT

Subject: Request for access to documents

Ref.: Your request of 15 October 2017 registered under reference GestDem 2017/5404

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.

In accordance with the fair solution agreed on 30 October 2017, the Legal Service has split your request in six consecutive batches. On 19 December 2017 you have received the first reply concerning cases C-601/15PPU and C-445/15.

The present reply refers to the second batch of your request concerning the documents filed by all Member States in cases C-194/15², C-163/15³ and C-143/15⁴. The Court of Justice has notified to the European Commission the submissions made to the Court by the following Member States:

Case C-194/15 (language of the proceedings: Italian)

1. the German Government
2. the Danish Government,
3. the Government of the United Kingdom,
4. the Portuguese Government and
5. the Italian Government.

¹ OJ L 145, 31.05.2001, page 43.

² Order of the Court of 4 February 2016 in case *Baudinet and Others*, C-194/15, ECLI:EU:C:2016:81.

³ Judgment of the Court of 4 February 2016 in *Hassan*, C-163/15, ECLI:EU:C:2016:71.

⁴ Judgment of the Court of 25 February 2016 in *G.E. Security*, C-143/15, ECLI:EU:C:2016:115.

Case C-163/15 (language of the proceedings: German)

6. the German Government and
7. the Polish Government.

Case C-143/15 (language of the proceedings: Dutch)

8. the Dutch Government.

In accordance with article 4(4) of Regulation (EC) No 1049/2001, the Commission has consulted the Member States on the disclosure of their documents. Following these consultations, I would like to inform you that:

With regards to case C-194/15, the German and Portuguese Governments have agreed to the disclosure of their documents. The Danish Government and the Government of the United Kingdom have not replied to the Commission's consultation. The Italian Government has expressed its opposition to the disclosure of its document.

As far as case C-163/15 is concerned the Polish Government has agreed to their disclosure of its document, whereas the German Government has not replied to the Commission's consultation.

As for case C-143/15, the Dutch Government has also agreed to the disclosure of its document.

With regards to the documents for which the Commission has not received a reply from the Member States concerned, as the Court of Justice has recognised in its judgment in joined cases C-514/07P, C-528/07P and C-532/07P, in cases where the proceedings have been closed by a decision of the Court, there are no longer grounds for presuming that disclosure of the pleadings lodged to the Court of Justice would undermine the judicial activities of the Court⁵.

Since the cases concerned are now closed, and in the absence of an objection from the Member States, I would like to inform you that access can also be granted to the relevant documents in accordance with Regulation (EC) No 1049/2001, i.e. the observations submitted by the Danish Government and the Government of the United Kingdom in case C-194/15 and by the German Government in case C-163/15.

Please note that personal data has been expunged; more specifically, the handwritten signatures, the professional email of the agent representing the Government of the United Kingdom, 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) No 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 (EC) No 45/2001⁸, personal data shall only be transferred to recipients if they establish the necessity of having the data 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.

⁵ Judgment of 21 September 2010 in joined cases *Sweden and Others v API and Commission*, C-514/07P, C-528/07P and C-532/07P, ECLI:EU:C:2010:541, paragraphs 130 and 131.

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, page 1.

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.

Observations submitted by the Italian government in case C-194/15

As already mentioned, the Italian authorities have refused to grant access to the observations submitted in case C-194/15. More precisely, the referred authorities consider that the requested document is linked to pending proceedings and for this reason its content must be protected under Article 4(2) second indent of Regulation (EC) No 1049/2001⁹.

The purpose of the exception for the protection of court proceedings is to protect the integrity of court proceedings and to ensure the proper course of justice. In this sense, the Court of Justice has recognised in its judgment in joined cases C-514/07P, C-528/07P and C-532/07P that disclosure of pleadings lodged before the Court of Justice in pending court proceedings is presumed to undermine the protection of these proceedings. The Court has furthermore stated that with the closure of the proceedings there are no longer grounds to presume that disclosure of the pleadings would undermine the judicial activities of the Court¹⁰. However, the Court has admitted the possibility that disclosure of pleadings relating to court proceedings, which are closed but connected to other proceedings which remain pending, may create a risk that the later proceedings might be undermined¹¹.

The Italian authorities indicate in their reply that, following the order of the Court of Justice, the Provincial Tax Commission of Turin issued a decision¹², which is currently under appeal before the Regional Tax Commission of Piemonte¹³. The written observations submitted by the Italian Government contain elements which, if released to the public, could cause a disadvantage for the tax administration in the subsequent proceedings.

Pursuant to Article 4(2) of Regulation (EC) No 1049/2001, the exception to the right of access must be waived if there is an overriding public interest in disclosing the requested document. In order for an overriding public interest in disclosure to exist, this interest, firstly, has to be public and, secondly, overriding, i.e. in this case it must outweigh the interest protected under Article 4(2) second indent. In the present case, I see no elements capable of showing the existence of an overriding public interest in disclosure of the refused document that would outweigh the public interest in the protection of the national pending proceedings.

Therefore, access to the observations submitted by the Italian government in case C-194/15 must be refused. Accordingly, please find attached the requested documents, expunged of personal data, in all available languages, with the exception of the observations submitted by the Italian government in case C-194/15.

REUSE OF THE DOCUMENTS

Please note that the disclosed documents were transmitted by the Court of Justice to the Commission in its capacity as participant to the Court proceedings at stake. Access is granted 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.

⁹ Article 4(2) second indent of Regulation (EC) No 1049/2001 states by way of exception that "[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] court proceedings [...] unless there is an overriding public interest in disclosure".

¹⁰ Judgment of 21 September 2010 in joined cases C-514/07P, C-528/07P and C-532/07P - *Sweden v API and Commission, API v Commission and Commission v API*, EU:C:2010:541, paragraphs 130 and 131.

¹¹ *Ibid*, paragraph 132

¹² No 359/7/17 of 11 January 2017.

¹³ Appeal of 13 October 2017.

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,

A handwritten signature in black ink, appearing to read 'Luis Romero Requena', written in a cursive style.

Luis ROMERO REQUENA

Attachments: 19