



EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels,

by e-mail

Brussels,

Ms Luisa Izuzquiza
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Spain

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Subject: Request for access to documents

Ref.: Your request of 15 October 2017 registered under reference GestDem 2018/0672

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.

The present reply refers to the third batch of your request concerning the documents filed by all Member States in cases C-124/15², C-22/15³, C-454/14⁴ and C-446/14 P⁵. The Court of Justice has notified to the European Commission the submissions made to the Court by the following Member States:

- Case C-124/15
 1. Observations by the Hungarian Government,
- Case C-22/15
 2. Defence by the Dutch Government,
 3. Rejoinder by the Dutch Government,

¹ OJ L 145, 31.05.2001, page 43.

² Judgment of the Court of 17 February 2016 in *Salutas Pharma*, C-124/15, ECLI:EU:C:2016:87.

³ Judgment of the Court of 25 February 2016 in *Commission v Netherlands*, C-22/15, ECLI:EU:C:2016:118.

⁴ Judgment of the Court of 25 February 2016 in *Commission v Spain*, C-454/14, ECLI:EU:C:2016:117.

⁵ Judgment of the Court of 18 February 2016 in *Germany v Commission*, C-446/14 P, ECLI:EU:C:2016:97.

- Case C-454/14
 - 4. Defence by the Spanish Government,
 - 5. Rejoinder by the Spanish Government,
- Case C-446/14P
 - 6. Application by the German Government and
 - 7. Reply by the German Government

The Commission has consulted, in accordance with article 4(4) of Regulation (EC) No 1049/2001, the authors of the requested documents on their disclosure. I would like to inform you that all Governments have agreed to the disclosure of their documents.

Please note that personal data has been expunged. More specifically, as requested by the Spanish Government, the name of the State Lawyer representing Spain before the Court of Justice has been redacted (documents under numbers 4 and 5). Furthermore, handwritten signatures (documents under numbers 4 to 7) as well as the initials of the Court's lawyers-linguists in the French translations of documents under numbers 1 and 3 have been expunged. 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 (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.

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.

Accordingly, please find enclosed the expunged versions of the requested documents in the language of the Member State (document under number 1), the language of the proceedings (documents 2 to 7) as well as a French translation of documents under numbers 1 and 3⁹.

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.

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.

⁹ Please note that the Commission has not received the translation into French for the rest of documents concerned by this request.

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: 9