



EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels,
Ms Luisa Izuzquiza
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BY E-MAIL

Subject: Request for access to documents

Ref.: Your request of 15 October 2017 registered under reference GestDem 2018/1072

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 forth batch of your request concerning the documents filed by all Member States in cases C-429/14² and C-336/14³. The Court of Justice has notified to the European Commission the submissions made to the Court by the following Member States:

Case C-429/14 (language of the proceedings: Lithuanian)

1. the German Government
2. the Lithuanian Government and
3. the Latvian Government.

Case C-336/14 (language of the proceedings: German)

4. the German Government,
5. the Belgian Government and
6. the Greek Government.

¹ OJL145, 31.05.2001, page 43.

² Judgment of the Court of 17 February 2016 in *Air Baltic Corporation*, C-429/14, ECLI:EU:C:2016:88.

³ Judgment of the Court of 4 February 2016 in *Ince*, C-336/14, ECLI:EU:C:2016:72.

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 all Governments have agreed the disclosure, with the exception of the Greek Government, which has not replied to our consultation.

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 Court⁴.

Since case C-336/14 is now closed, and in the absence of an objection from the Greek Government, I would like to inform you that access can also be granted to the relevant document in accordance with Regulation (EC) No 1049/2001.

Please note that personal data has been expunged; more specifically, the handwritten signatures, the contact details of the agent representing the German Government, the names of the Court's employees, 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")⁵, 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 applicable⁶. According to Article 8(b) of Regulation (EC) No 45/2001⁷, 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.

Please find attached an expunged version of the requested documents in the language of the Member States and their translation in French, prepared by the Court's services.

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.

⁴ 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.

⁵ "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".

⁶ Judgment of the Court of 29 June 2010 in *Commission v The Bavarian Lager Co. Ltd*, C-28/08 P, EU:C:2010:378.

⁷ OJ L 8, 12.1.2001, page 1.

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: 13