



EUROPEAN COMMISSION

LEGAL SERVICE
The Director-General

Brussels, 27th September 2018

Ms Luisa Izuzquiza
Calle de las Fuentes 6, 4º2
28013 Madrid
Spain

By email
[ask+request-5407-
07e205cb@asktheeu.org](mailto:ask+request-5407-07e205cb@asktheeu.org)

Subject: Request for access to documents

Ref.: Your request of 12 April 2018 registered under reference GestDem 2018/3206.

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 the European Commission and the Dutch and Polish Governments in case C-550/16².

In accordance with the fair solution agreed on 13 April 2018, your request under reference GestDem 2018/3206 has been treated as the seventh and last batch of your request of 15 October 2017³.

1. WRITTEN OBSERVATIONS SUBMITTED BY THE EUROPEAN COMMISSION

With regards to the written observations submitted by the European Commission, after a concrete assessment of the requested document, I am pleased to inform you that access can be granted.

Accordingly, please find attached the requested document, in Dutch, which was the language of the proceedings. The French translation of the written observations, prepared by the Commission's services, is also attached.

You may reuse the requested documents free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

¹ OJ L 145, 31.05.2001, page 43.

² Judgment of the Court of Justice of 12 April 2018 in *A and S*, C-550/16, ECLI:EU:C:2018:248.

³ Ares(2018)1993771.

2. WRITTEN OBSERVATIONS SUBMITTED BY OTHER PARTIES

Regarding the written observations lodged with the Court of Justice by the Dutch and Polish Governments, in accordance with article 4(4) of Regulation (EC) No 1049/2001, the Commission has consulted the authors on the disclosure of their documents.

Following these consultations, I would like to inform you that both the Dutch and Polish Governments have agreed to the disclosure of their documents.

Accordingly, please find attached the written observations submitted by the referred Member States. The documents concerned are available in the respective language of the Member States. Furthermore, a Dutch translation of the written observations submitted by the Polish Government has been prepared by the services of the Court of Justice, together with the French translation of the documents submitted by both Governments.

Please note that personal data has been expunged in the French translation of the written observations submitted by the Polish Government. More specifically, 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*")⁴, 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 applicable⁵. According to Article 8(b) of Regulation (EC) No 45/2001⁶, 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 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.

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 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 "*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*".

⁵ Judgment of the Court of Justice 29 June 2010 in *Commission v The Bavarian Lager Co. Ltd*, C-28/08 P, ECLI:EU:C:2010:378.

⁶ OJ L 8, 12.1.2001, page 1.

3. 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: 7