



## EUROPEAN COMMISSION

LEGAL SERVICE  
The Director General

Ref. Ares(2018)1990267 - 13/04/2018

Brussels,

Mr Simon Burger  
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### **BY E-MAIL AND REGISTERED MAIL WITH ACKNOWLEDGMENT OF RECEIPT**

**Subject:** Request for access to documents

**Ref.:** Your e-mail of 15 February 2018 registered under reference GestDem 2018/1051

Dear Mr Burger,

I refer to your application for access to documents, under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>1</sup>. Your request concerns the documents filed by the parties and interveners in Cases T-286/09, C-413/14P, C-592/14, C-424/13, C-366/10 and C-89/85.

In accordance with the fair solution agreed on 21 February 2018, the Legal Service has split your request in three consecutive batches.

This reply concerns the first batch of your request concerning the documents filed in Cases T-286/09, C-413/14P, C-592/14, C-424/13.

#### **1. ASSESSMENT**

##### **1.1. Cases T-286/09 Intel Corp. v Commission and C-413/14 P Intel Corp. Inc. v Commission**

I regret to inform you that access cannot be granted to the submissions in the referred cases since they are covered by the exception provided for under Article 4(2) second indent of Regulation (EC) No 1049/2001 ("*protection of court proceedings*").

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<sup>1</sup> OJ L 145, 31.05.2001, page 43.

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"*.

The purpose of the exception for the protection of court proceedings is to maintain the independence of the European Union institutions in their dealings with the Court as well as to ensure the proper course of justice and a fair hearing for the parties.

The documents to which you request access reflect the Commission and third parties' legal arguments in Cases T-286/09 and C-413/14P. On 6 September 2017, the Court of Justice rendered its judgment in Case C-413/14P, appeal brought by Intel Corporation against the judgment of the General Court delivered on 12 June 2014 in case T-286/09. In its judgment of 6 September 2017 the Court set aside the judgment of the General Court of 12 June 2014 and referred Case T-286/08 back to the General Court, having been registered under Case number T-286/09RENV<sup>2</sup>. This latter case is currently before the General Court. Public disclosure of the requested documents while the case is pending would undermine the pending court proceedings by affecting negatively the atmosphere of total serenity in which the exchange of arguments by the parties and the deliberations of the Court shall take place.

In this regard, the Court of Justice has stated in its judgment in joined cases C-514/07P, C-528/07P and C-532/07P that the pleadings lodged in court proceedings are wholly specific since they are inherently part of the judicial activities of the Court and that these activities are as such excluded from the scope of the right of access to documents without any distinction being drawn between the various procedural stages, in the light of the need to ensure that, throughout the court proceedings, the exchange of arguments by the parties and the deliberations of the Court in the case before it take place in an atmosphere of total serenity<sup>3</sup>.

In addition, the Court has recognised the existence of a general presumption under which *"disclosure of the pleadings lodged by one of the institutions in court proceedings would undermine the protection of those proceedings, for the purposes of the second indent of Article 4(2) of Regulation No 1049/2001, while those proceedings remain pending"*<sup>4</sup>.

Public disclosure of the pleadings, at this stage, would indeed undermine the ongoing court proceedings and the atmosphere of total serenity. Therefore, as long as Case T-286/09RENV remains pending, I consider that the requested documents need to be protected in accordance with the exception for the protection of court proceedings and a public access cannot be granted.

Please note that in accordance with the case law of the Court of Justice, the Commission is entitled to refuse access to documents covered by a general presumption, without having to carry out a specific and individual examination of these documents<sup>5</sup>.

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<sup>2</sup> <http://curia.europa.eu/juris/liste.jsf?num=T-286/09&language=en>.

<sup>3</sup> 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, EU:C:2010:541, paragraphs 77, 79 and 92.

<sup>4</sup> Ibid paragraph 94.

<sup>5</sup> Judgment of 14 July 2016 in Case *Sea Handling v Commission*, C-271/15 P, EU: C:2016:557, paragraph 69.

## **1.2. Cases C-592/14 European Federation for Cosmetic Ingredients v Secretary of State for Business a.o. and C-424/13 Zuchtvieh-Export GmbH v Stadt Kempten**

The submissions to the Court of Justice in possession of the Commission are the following:

### Case C-592/14 (language of the proceedings: English)

1. European Federation for Cosmetic Ingredients (EFfCI)
2. British Union for the Abolition of Vivisection (BUAV) and European Coalition to End Animal Experiments (ECEAE)
3. Greece
4. United Kingdom
5. European Commission

### Case C-424/13 (language of the proceedings: German)

6. Zuchtvieh-Export GmbH
7. Stadt Kempten
8. Landesanstalt für Tierwohl Bayern
9. Lithuania
10. European Commission

Regarding the submissions made by the Commission, on 21 February 2018 we sent you the Observations in case C-592/14 (document under number 5). With reference to the Observations in case C-424/13 (document under number 10), I have the pleasure to inform you that they can be disclosed under Regulation (EC) No 1049/2001

With regards to the submissions made by the other parties other than the Commission, the latter has consulted the third parties concerned on the disclosure of their documents, in accordance with article 4(4) of Regulation (EC) No 1049/2001. Following these consultations, I would like to inform you that:

### Case C-592/14

- BUAV and ECEAE have agreed to the disclosure of their joined submission (document under number 2).
- For its part, the United Kingdom has also given its agreement to the disclosure of its submission (document under number 4).
- Law firm representing EFfCI has refused access to its submission on the ground that its disclosure would jeopardize the interests protected by the exceptions foreseen in Article 4, paragraph 2, first indent ("*protection of commercial interests of a natural or legal person*") and in second indent ("*protection of the legal advice*") of Regulation No (EC) 1049/2001 (document under number 1).

In its reply, it considers that arguments and positions presented in the observations have taken the commercial position of the EFfCI members into account and its disclosure would have harmful effects to the commercial interests of EFfCI.

- Greece has also refused access to its submission on the ground that its covered by the exception provided for in Article 4, paragraph 2, second indent ("*protection of court proceedings and legal advice*") of Regulation No (EC) 1049/2001. The Greek authorities consider that disclosure of the legal argumentation of the Hellenic Republic in this particular case may jeopardise its legal position in similar cases (document under number 3).



- Zuchtvieh-Export GmbH (document under number 6), Stadt Kempten (document under number 7) and Lithuania (document under number 9) have given their agreement to the disclosure of their respective submissions.
- Regarding document under number 8, the Commission has not received a reply to its consultation to the law firm representing Landesanwaltschaft Bayern.

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 Court<sup>6</sup>.

Since Case C-424/13 has been closed by judgment of the Court of Justice of 23 April 2015, and in the absence of an objection from the law firm representing Landesanwaltschaft Bayern, I inform you that access can also be granted to the observations submitted by it.

Accordingly, in line with the linguistic preferences expressed by you, you will find enclosed a copy of documents under numbers 2 and 4 in English, the language of the proceedings in case C-592/14. You will also find attached a copy of documents under numbers 6, 7, 8 and 10 in German, language of the proceedings in Case C-424/13, as well as a German translation of document under number 9 made by the services of the Court of Justice.

### **1.3. Protection of privacy and the integrity of the individual**

Please note that personal data has been expunged in the disclosed documents. More specifically, the e-mail addresses, the initials of the Court's lawyers-linguists, the references of the bank accounts (in document under number 7) as well as the handwritten signatures have been redacted. This information must be protected under the exception provided for in Article 4 (l)(b) of Regulation (EC) No 1049/2001 ("*protection of personal data*")<sup>7</sup>, in accordance also with the European Union legislation regarding the protection of personal data.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable<sup>8</sup>. According to Article 8(b) of Regulation (EC) No 45/2001<sup>9</sup>, 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.

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<sup>6</sup> 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.

<sup>7</sup> "*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*".

<sup>8</sup> Judgment of the Court of 29 June 2010 in Case *Commission v The Bavarian Lager Co. Ltd*, C-28/08 P, EU:C:2010:378.

<sup>9</sup> OJ L 8, 12.1.2001, page 1.

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.

## **2. OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

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), first and second indents. 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 commercial interests invoked by EFfCI as well as the legal position of Greece in similar court cases.

## **3. 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. MEANS OF REDRESS**

Should you wish the foregoing 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](mailto: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