



EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels,

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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 2018/1490

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 solutions agreed on 30 October 2017 and on 13 April 2018, the Legal Service has split your initial request of 15 October 2017 in six consecutive batches, adding also a seventh batch following your new request of 12 April 2018².

The present reply refers to the sixth batch of your request concerning the documents filed by all Member States in cases C-292/14³ and C-179/14⁴. The Court of Justice has notified to the European Commission the written observations lodged by the following Member States:

Case C-292/14:

1. The Greek Government and
2. the Italian Government.

Case C-179/14:

3. The Hungarian Government.

¹ OJ L 145, 31.05.2001, page 43.

² Ares(2018)1993771.

³ Judgment of 25 February 2016 in *Stroumpoulis and Others*, case C-292/14, ECLI:EU:C:2016:116.

⁴ Judgment of the Court of 23 February 2016 in *Commission v Hungary*, case C-179/14, EU:C:2016:108.

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:

- The Italian Government has agreed to the disclosure of its document.
- The Greek and the Hungarian Governments have refused to grant access to their documents, considering that they must remain confidential in accordance with the exception provided for under Regulation (EC) No 1049/2001 for the protection of court proceedings, as will be explained below.

DISCLOSURE OF THE DOCUMENTS SUBMITTED BY THE ITALIAN GOVERNMENT

Please find attached the written observations submitted by the Italian Government. The document concerned is available in Italian, while a French translation has been prepared by the services of the Court of Justice.

Please note that personal data has been expunged in the Italian version of the written observations. More specifically, the handwritten signature of the agent representing the Italian Government has 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 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 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.

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.

REFUSAL OF THE DOCUMENTS SUBMITTED BY THE GREEK AND HUNGARIAN GOVERNMENTS

As far as the documents submitted by the Greek and Hungarian Governments are concerned, the authorities of both Member States have expressed their opposition to the disclosure of the requested documents.

More precisely, they consider that access must be refused in accordance with the exception provided for under article 4(2) second indent of Regulation (EC) No 1049/2001 for the protection of court proceedings.

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 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 Court⁸. 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 undermined⁹.

More particularly, the Hellenic Republic considers that disclosure of the legal argumentation contained in its written observations in case C-292/14 may hinder its legal position in similar cases.

Similarly, the Hungarian authorities consider that the disclosure of its written observations in case C-179/14 would have an adverse impact on different proceedings pending before the International Centre for Settlement of Investment Disputes, in which Hungary takes part as a respondent state. These proceedings are: ARB/13/35 *Le Chèque Déjeuner and C.D Holding Internationale v. Hungary*¹⁰ and ARB/14/20 *Sodexo Pass International SAS v. Hungary*¹¹. The argumentation contained in the requested document is considered to be linked to the pending arbitration proceedings and its disclosure could harm the proper course of justice. Therefore, while these proceedings remain pending, the Hungarian authorities do not agree to the disclosure of their submission in case C-179/14.

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 interests 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 documents that would outweigh the public interest in the protection of the ongoing proceedings.

⁸ 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.

⁹ Ibid, paragraph 132.

¹⁰ <https://icsid.worldbank.org/en/Pages/cases/casedetail.aspx?CaseNo=ARB/13/35>.

¹¹ <https://icsid.worldbank.org/en/Pages/cases/casedetail.aspx?CaseNo=ARB/14/20>.

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: 2