



EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels, 4th July 2019

By email

Mr Kenneth Haar
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Subject: Request for access to documents

Ref.: Your requests of 3 May 2019 registered under references GestDem 2019/2611 and 2019/2612

Dear Mr Haar,

I refer to your above-referenced two requests for access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹. Your requests concern:

1. *“All written contributions from the European Commission to Case C-434/15² - Asociación Profesional Elite Taxi (GestDem 2019/2611); and*
2. *“All written contributions from the European Commission to Case C-390/18 - AIRBNB Ireland at the European Court of Justice” (GestDem 2019/2612).*

1. DISCLOSURE OF THE WRITTEN OBSERVATIONS IN CASE C-434/15

After a concrete assessment of the Commission's written submissions, I am pleased to inform you that full access can be granted in accordance with Regulation (EC) No 1049/2001.

Accordingly, please find attached a French translation³ of this document (Spanish being the language of the proceedings). Please note that you may reuse the disclosed document 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 it. 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 20 December 2017, ECLI:EU:C:2017:981.

³ The only linguistic version available apart from the language of the proceedings.

2. REFUSAL OF THE WRITTEN OBSERVATIONS IN CASE C-390/18

I regret to inform you that access cannot be granted to the requested document, since Case C-390/18 is currently pending before the Court of Justice. Due to this reason, the written observations must be protected under the exception provided for under Article 4(2), second indent of Regulation (EC) No 1049/2001 ("*protection of court proceedings*")⁴.

The purpose of the exception for the protection of court proceedings is to maintain the independence of the EU institutions in their dealings with the Court and to ensure the proper course of justice.

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 before the Court of Justice 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 serenity⁵.

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*"⁶.

Public disclosure of the written observations in Case C-390/18, at this stage, would undermine the pending court proceedings and their serenity. Therefore, I consider that the requested document is clearly covered by the exception provided for in Article 4(2), second indent and cannot be disclosed while the relevant Case remains pending.

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 documents⁷.

3. 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) 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 document that would outweigh the public interest in the protection of the ongoing proceedings.

⁴ "[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".

⁵ Judgment of the Court of Justice 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*, ECLI:EU:C:2010:541, paragraphs 77, 79 and 92.

⁶ *Ibid.*, paragraph 94.

⁷ Judgment of the Court of Justice of 14 July 2016 in *Sea Handling v Commission*, C-271/15 P, ECLI:EU:C:2016:557, paragraph 69.

4. 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 address below:

European Commission
Secretary-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 5/282
B-1049 Brussels

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Luis ROMERO REQUENA

Attachment: 1