

**From:** [REDACTED]  
**To:** [SG ACCES DOCUMENTS](#)  
**Subject:** AW: Ares(2014)3638825 - Reply to request about access to documents under Regulation N° 1049/2001 - Gestdem 2014/3009  
**Date:** lundi 3 novembre 2014 15:13:44  
**Attachments:** [141027 - Access to documents under Regulation N 1049-2001 - Gestdem 2014....pdf](#)  
[141030 - final reply - Demande d acces aux documents - \[REDACTED\] - Gestdem 20....pdf](#)

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Dear Madam or Sir,

I hereby would like to submit my **confirmatory application** for the documents requested initially in June 2014 under **Gestdem 2014/3009**.

My argumentation on substance, in reply to the arguments put forward by the Commission (I've attached both documents received):

**Regarding (2) "Assessment and conclusions under Regulation 1049/2001"**

a) I take note that the Council objects disclosure of parts of the document because it would "seriously undermine the institution's decision-making process". My understanding is that the document requested has been drafted by the European Commission and that 1049/2001 refers to the decision-making of the institution that has drawn up the document from which it is requested to which the sentence in Article 4(3) refers. Unless the Council has provided reasons that concern the European Commission, 4(3) should not apply in this case. In case the Commission document requested misrepresents Council's views (or that of the Presidency or other non-Commission officials), the Council would always have the possibility to make its differing views known, which should in no case "seriously undermine" the Commission's decision-making process except for maybe adapting the way Flash Reports are drafted (which is not "serious" however). On a matter of principle, I would also like to challenge the Commission's practice in consulting other institutions on the disclosure of documents and providing a quasi-veto, which is a practice not foreseen by Regulation 1049/2001 in my reading.

b) I take note that the European Parliament has no objections to full disclosure of the documents. My understanding would be that anything that concerns the Parliament's views would therefore not be covered, even under the interpretation that I have challenged in (a). It is unclear from the documents in how far Parliament's views have also been redacted.

c) I take note that the exceptions put forward under 1049/2001 are used without discrimination for the difference between the MFF decision-making and the annual budget decision-making, which, although linked, in my understanding are different in nature. The exceptions have also been used without making a difference in time (e.g. providing more access to older documents), which implies that any publication of past Conciliation/trilogue documents for budgetary procedures would "seriously undermine" (today's) decision-making process, even after many of the persons who have been involved until 2013 are no longer in office.

## **Regarding (2.1) "Undisclosed parts of documents concerned: protection of the decision-making process"**

d) I would like to repeat my point (a). After quoting 4(3) which clearly refers to "the **institution's** decision-making process", the reasoning then only refers to "seriously undermine **the** decision-making process", omitting "institution's". The rest of the argumentation of (a) applies.

e) I would like to highlight that in the established case law of the Court and in recent decisions of the Ombudsman, it has been repeatedly required that the institutions would highlight how **concretely** a disclosure of EU documents or parts of these documents would undermine the institution's decision-making. There is no indication how *each* of the many passages redacted in all of the partially disclosed documents would undermine the institution's decision-making process, not even what those passages contain (compared to the ones disclosed).

f) In the detailed reasoning for 2.1, the Commission highlights that the trilogue meetings "took place in a sphere of confidence and trust". It seems to be implied in that paragraph that publication in full of the documents requested would undermine this, however no concrete reasoning on (1) how that trust would be concretely undermined and how this would concretely undermine the (institution's) decision-making process and (2) how the fact that, if (1) can be proven, information disclosed about a past decision-making process can still have such a seriously undermining effect today.

g) In the further detailed reasoning, the Commission argues that the documents requested include "position of individual representatives" or that "interpretations by Commission staff of positions expressed by the other institutions' delegations". It is obvious from the nature of the documents requested that they are not final/official decisions taken by the Commission as a whole or minutes approved by all 3 institutions, but 1049/2001 does not only apply to this type of documents. The same applies to the argument that the documents had been drafted "in the expectation that they would remain confidential", although 1049/2001 was in place for about 10 years at the time the earliest of the documents had been drafted, so it is impossible that a document is drafted with the expectation that it would forever remain confidential unless in violation of the principles of the treaties and 1049/2001.

h) In final sentences of the 2.1, the Commission then argues that the fact that Council contradicted the disclosure of parts of the documents of decision-making processes that have been finalized in the past is an indication that in case of disclosure the Commission's "actions and leverage", highlighting a mixed negative impact on the Commission's own and the interinstitutional decision-making process, with only the former being formally covered by 4(3), as argued above. However, the Commission does not explain how the fact that a document summarizing one (or several) officials summary observations from an interinstitutional meeting, when published, would by nature undermine the Commission's role. If this generalized argument was true, no access at all should have been provided to

the documents in question and no access to any trilogue documents may be provided (although this has clearly happened in the past).

i) In addition, the argumentation which is solely focused on the Council's views does not take into account that the European Parliament did not have any objections to the documents being disclosed, which effectively would give Council a veto of access to trilogue documents produced, since the only reason for redaction that the Commission provides and that does not refer to the protection of personal data is solely based on Council's position.

### **Regarding (2.2): Names of the Commission officials in the documents concerned**

j) I would argue that there is an overriding public interest in disclosure of the names of officials involved (see (n) below).

k) My understanding of the rules in place, the case law of the Court and the practice of the Commission is that only if the persons concerned object to the publication of their personal data, then it cannot be disclosed. The reply received does not indicate that the persons in question have been asked whether they agree (or disagree) that their names would be disclosed.

l) If the argumentation in (j) and (k) is rejected (in view of 2.2), then I would argue that any information about affiliation of the officials concerned (e.g. unit), if also removed (which is unclear from the documents disclosed), would not constitute a personal data in the sense of the data protection regulation, as it would not allow the identification of the person in question.

### **Regarding (2.3): No overriding public interest**

m) There is a first overriding public interest that is **inherent to the documents requested**: All of them documents concern *legislative* decision-making processes for which both the Court and the decisions of the Ombudsman have made quite clear in several instances that the public interest in disclosure is extremely high. This is the more true as all documents requested are formalized or quasi-formalised meetings with representation at mostly the highest political level of all three institutions, i.e. involving directly elected or politically legitimized representatives whose action deserve closest public attention who take final substantive decisions in those meetings. Furthermore, the decision-making process concerns in all cases budgetary processes covering hundreds of billions of Euros, decisions that the public should be able to trace for their scope alone.

n) There is a second overriding interest inherent on the **reason for which the documents have been requested**: The request is made in the context of a research project financed by a public institution (the DFG) and conducted in a public university (LMU München), which tries to understand the details of public decision-making, including the role of administrations and of individual politicians and administrators (which is why access to names/functions of officials is also needed, see(j)). The findings from this research will

serve to educate the next generation of political scientists who will become public officials, journalists, etc., whose understanding of the intricacies of public decision-making will make them able to better perform their public-interest tasks. Furthermore, through the publication of the research, a wider public will be informed on the challenges of public decision-making (here: at EU level). Without access to the documents requested, crucial aspects of that decision-making on EU budget negotiations remain almost impossible to trace, reducing the value of the knowledge that we are trying to generate in a public interest.

**General remarks:**

o) The redaction of the passages not disclosed to me does not allow to judge the length of the text that is not to be made public. This does not allow to judge the scope of the information that has not been disclosed.

**Conclusion:**

In light of the reasons (a)-(n), I would therefore put forward the confirmatory application with a view to receiving full or at least the widest possible access to the documents in question.

I thank you for your consideration and am happy to provide you with any clarification for the arguments put forward above, including by phone if this facilitates the process.

Sincerely yours,

[Redacted signature]

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[Redacted signature]

Post-Doctoral Research Fellow

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-----Ursprüngliche Nachricht-----

Von: EC ARES NOREPLY [<mailto:xxxxxxxxxxxxxxxxxx@xx.xxxxxx.xx>]

Gesendet: Montag, 3. November 2014 12:43

An: [REDACTED]

Betreff: Ares(2014)3638825 - Reply to request about access to documents under Regulation N° 1049/2001 - Gestdem 2014/3009

Veuillez trouver ci-joint le document Ares(2014)3638825 concernant "Reply to request about access to documents under Regulation N° 1049/2001 - Gestdem 2014/3009" envoyé par [REDACTED] le 03/11/2014.

Please find attached document Ares(2014)3638825 regarding "Reply to request about access to documents under Regulation N° 1049/2001 - Gestdem 2014/3009" sent by [REDACTED] on 03/11/2014.

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