



EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels, 24 March 2020

Mr. Patryck Wachowiec
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BY E-MAIL AND REGISTERED MAIL WITH ACKNOWLEDGMENT OF RECEIPT

Subject: Request for access to documents

Ref.: Your requests of 19 December 2019 registered under references GestDem 2019/7353 and GestDem 2019/7357.

Dear Mr. Wachowiec,

I refer to your requests for access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹. Your requests concern the written pleadings submitted to the Court of Justice in the Cases C-192/18², C-619/18³ and C-619/18R⁴.

1. IDENTIFICATION OF THE DOCUMENTS

After examination of the files of the Legal Service, the written pleadings submitted by the following parties have been identified as matching the terms of your request:

Case C-192/18 :

1. Commission's application;
2. Commission's reply;
3. Poland's defence;
4. Poland's rejoinder;

¹ Official Journal L 145, 31.05.2001, page 43.

² Judgment of the Court of Justice of 5 November 2019, Case C-192/18, *Commission v Poland*, ECLI:EU:C:2019:924.

³ Judgment of the Court of Justice of 24 June 2019, Case C-619/18, *Commission v Poland*, ECLI:EU:C:2019:531.

⁴ Order of the Court of Justice of 17 December 2018, in Case C-619/18R, *Commission v Poland*, ECLI:EU:C:2018:1021.

Case C-619/18 :

5. Commission's application;
6. Commission's application for an expedited procedure;
7. Poland's defence;
8. Poland's reply on expedited procedure;
9. Hungary' intervention request;

Case C-619/18 R :

10. Commission's application for interim measures;
11. Poland's observations on interim measures;
12. Hungary's intervention request.

Please be informed that the Statements in Intervention of the Hungarian Government in Cases C-619/18 and C-619/18R were not transmitted by the Court of Justice to the Commission. Article 2(3) of Regulation (EC) No 1049/2001 states that “[T]his regulation shall apply to all documents held by an institution [...]”. Since the Commission does not hold those documents it is unable to consider them for the purpose of your request.

2. WRITTEN PLEADINGS SUBMITTED BY THE EUROPEAN COMMISSION (DOCUMENTS 1, 2, 5, 6 AND 10)

After a concrete assessment of the Commission's written pleadings, I am pleased to inform you that access can be granted to them, under Regulation (EC) No 1049/2001.

Accordingly, please find enclosed a copy of documents 1, 2, 5, 6 and 10 in Polish, the language of the proceedings. You may reuse the disclosed 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 them. Please note that the Commission does not assume liability stemming from the reuse.

3. WRITTEN PLEADINGS SUBMITTED BY THIRD PARTIES (DOCUMENTS 3, 4, 7 TO 9, 11 AND 12)

As far as the written observations of the other parties are concerned, the Commission has consulted the authors of the respective documents on their disclosure, in accordance with Article 4(4) of Regulation (EC) No 1049/2001.

Following these consultations, I would like to inform you that:

- the Government of Hungary (documents 9 and 12) agreed to the disclosure of its written pleadings;
- the Government of Poland has informed the Commission that it refuses access to its written submissions (documents 3, 4, 7, 8 and 11), considering that they are covered by the exception provided for in Article 4(2), second indent, of Regulation (EC) No 1049/2001 (“*protection of court proceedings*”), as explained in point 4 below.

In the light of this, access can be granted to documents 9 and 12. Accordingly, you will find enclosed a Polish translation, made by the services of the Court, of document 12 and the original version of document 9⁵.

⁵ The only available language version.

The disclosed documents were transmitted by the Court of Justice to the Commission in its capacity as participant in the Court proceedings. Access to them is granted for information only and they cannot be re-used without the agreement of the originators, who may hold the copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

4. REFUSAL OF THE WRITTEN PLEADINGS SUBMITTED BY THE GOVERNMENT OF POLAND (DOCUMENTS 3, 4, 7, 8 AND 11)

As indicated above, the Government of Poland has informed the Commission that it opposes the disclosure of its written submissions considering that they are covered by the exception provided for under Article 4(2), second indent, of Regulation (EC) No 1049/2001 ("*protection of court proceedings*")⁶.

In its judgment in Joined Cases C-514/07P, C-528/07P and C-532/07P, the Court of Justice recognized the existence of a general presumption under which disclosure of the pleadings lodged by an institution 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, for as long as those proceedings remain pending.⁷

In this respect, the Government of Poland argues that although the proceedings in Cases C-192/18, C-619/18 and C-619/18R have been closed by the judgments of the Court of Justice, the implementation of those judgments is still pending. The Polish authorities consider that, so as long as the Commission has not taken a decision closing the relevant infringement proceedings against Poland, disclosure of their submissions is entirely covered by the exception mentioned above and they cannot be made publicly available.

Under these conditions, the Commission does not grant access to the documents under documents 3, 4, 7, 8 and 11.

5. 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 documents. 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, there are no elements capable of showing the existence of an overriding public interest in disclosure of the written pleadings submitted by the Government of Poland (documents 3, 4, 7, 8 and 11) that would outweigh the public interest invoked for the protection of court proceedings.

6. 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 Secretariat-General at the following address:

⁶ "[T]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data".

⁷ Judgment of the Court of Justice of 21 September, Joined Cases C-517/07P, C-528/07P and C-532/07P, *Sweden and others v API and Commission*, ECLI:EU:C:2010:541, paragraph 94.

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

Yours sincerely,

(signed electronically)
Luis ROMERO REQUENA

Attachments: 7