



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP
AND SMES

The Director-General

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Mr Olivier Hoedeman
Corporate Europe Observatory
Rue d'Edimbourg 26
B-1050 Brussels

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Subject: Request for access to documents – GESTDEM No. 2020/5917

Dear Mr Hoedeman,

Thank you for your e-mail of 6 October 2020 which was registered on the same day, requesting access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L145, 31 May 2001, page 43 and following).

1. SCOPE OF YOUR REQUEST

Your e-mail requested access to documents as follows:

-“the European Commission's analysis of, decisions on and responses to and actions taken regarding the seven notifications submitted by the French government in 2020 of requirements under the Services Directive (Article 15(7) and 39(5)). The seven notifications are listed here on the Commission's website: https://ec.europa.eu/internal_market/imi-net/repositories/servicesdirective-notifications/france_en.htm

The notifications are dated 6/4, 28/4, 30/4 and 6/7 2020.

In other words, we're requesting access to documents that show how the Commission analysed the notified measures and their compatibility with the Services Directive, the decisions the Commission has made on these notifications, as well as the communication with the French government and/or French local authorities and other action taken on the notifications.”

2. DESCRIPTION OF DOCUMENTS IDENTIFIED

Concerning present request to access we have identified three documents that match the scope of your request.

A list with the three documents (two comments from Commission services on incoming notifications and the reply from the French authorities to one comment) is in annex.

3. FULL DISCLOSURE OF 2 DOCUMENTS

We would like to inform you that two out of three identified documents are fully disclosed. These documents are: Commission comment to the IMI notification 119480 and the reply to this comment by the French authorities.

Please note that documents originating from third parties are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originator, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse. The documents do not reflect the position of the Commission and cannot be quoted as such.

4. NO DISCLOSURE OF 1 DOCUMENT

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we regret to inform you that one out of the three identified documents regarding your application cannot be granted, as disclosure is prevented by exception to the right of access laid down in Article 4 of this Regulation.

The document in question is the Commission comment to the IMI notification 134718.

The Commission would like to stress that national rules notified by France in the IMI notification 134718 are currently subject to another Commission investigation, which can imply contacts between Commission and national authorities. The on-going investigation could be jeopardized by the disclosure of Commission comments to notification 134718.

Disclosure of the document requested would undermine the protection of the purpose of the ongoing investigation; indeed, disclosure of the document at this point in time would affect the climate of mutual trust between the authorities of the Member State and the Commission, which is required to enable them to resolve the case without having to refer it to the Court of Justice. Therefore the exception laid down in Article 4(2) third indent of Regulation (EC) No 1049/2001 applies to these documents.

According to Regulation (EC) No 1049/2001, an exception to the right of access must be waived if there is an overriding public interest in disclosing the document concerned, which outweighs the interest protected by the exception to the right of access. In this case the Commission has reached the conclusion that there appears to be no overriding public interest in their disclosure in the sense of the Regulation.

The possibility of granting partial access in accordance with Article 4(6) of Regulation (EC) No 1049/2001 has also been examined. However, this is not considered possible since the document in question is covered in its entirety by the above-mentioned exception.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position. Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles

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

Yours faithfully,

(e-signed)

Kerstin Jorna

Enclosure: Documents register
2 Disclosed documents