



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate C - Transparency, Efficiency & Resources
SG.C.1-Transparency, Document Management & Access to Documents

Brussels
SG.C.1/CS/rc -

By registered mail with AR

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**Subject: Your applications for access to documents – GESTDEM 2020/2451
and 2020/2853**

Dear Mr Hillebrandt,

We refer to your e-mail sent to the European Commission on 13 May 2020 in which you make a request for access to documents, registered on 14 May 2020 under the reference number GESTDEM 2020/2853.

In your application, you request access to, I quote, ‘[T]he 31st to the 60th final decisions by the European Commission in confirmatory application procedures under Regulation 1049/2001 issued in 2019’. You further specify that ‘an initial request for access to the first 30 documents of this category was already made on 26 April 2019’.

Indeed, on 26 April 2020, you made another request for access to documents, registered on 28 April 2020 under the reference number GESTDEM 2020/2451. By this application, you request access to all decisions on confirmatory applications adopted by the Commission in January and February 2019.

Regarding both your applications GESTDEM 2020/2451 and 2020/2853, you further specify that you exclude from the scope of your request (i) any personal data contained in the requested decisions; and (ii) ‘any related documents’. By the latter, we understand your request to exclude explicitly the annexes to decisions on confirmatory applications,

namely the documents forming part of these decisions and to which full or partial access is granted.

Your applications registered as GESTDEM 2020/2451 and 2020/2853 concern the same category of documents, namely decisions on confirmatory applications adopted by the Commission in the year 2019.

On 29/04/2020, the Commission sent you a letter proposing a fair solution in the meaning of Article 6(3) of Regulation (EC) No 1049/2001 for dealing with your initial application for access to documents registered under the reference number GESTDEM 2020/2451¹. In its said letter, the Commission provided detailed reasons for its decision to put forward a proposal for a fair solution in accordance with Article 6(3) of Regulation (EC) No 1049/2001. It explained that your application concerns a very large number of documents, which need to be assessed individually, and that, according to its first estimates, a number of 10 documents could be dealt with within the extended deadline of 30 working days, counting from the date of registration of your initial application. Nevertheless, the Commission proposed to deal with an increased overall number of 30 documents falling within the scope of your request, or, in the alternative, to deal with all documents falling within the scope of your request as limited to one specific month covered by the timeframe of your request. In its decision to put forward this proposal, the Commission took into account the fact that you already exclude from the scope of your request any personal data contained in, as well as the annexes to, the requested documents, and your stated purpose of academic research. It also took into account the identical circumstances underpinning its earlier proposal for a fair solution concerning the handling of your similar initial requests registered under reference numbers GESTDEM 2019/7132, 2019/7134, 2019/7136, 2019/7137 and 2019/7138².

In your reply of 29 April 2020, you stated that you agree to narrow down the scope of your request to ‘either the first 30 confirmatory application decisions produced by the Commission in 2019, or to all confirmatory application decisions produced by the Commission in January 2019, whichever results in the highest number of documents being considered’³. Therefore, you indicated your agreement with the proposal for a fair solution put forward by the Commission and, as a result, the Secretariat-General of the Commission is currently handling your application registered as GESTDEM 2020/2451 by assessing the 30 decisions on confirmatory applications first adopted by the Commission in the year 2019, as this results in the highest number of documents being assessed.

In accordance with the case law of the EU Courts, Article 6(3) of Regulation (EC) No 1049/2001 may not be evaded by splitting an application into several, seemingly separate, applications⁴.

¹ Reference Ares(2020)2295844 - 29/04/2020.

² Reference Ares(2020)54028 - 07/01/2020.

³ Reference Ares(2020)2304392 – 30/04/2020.

⁴ Judgment of the General Court of 10 December 2010, *Ryanair v Commission*, T-494/08, EU:T:2010:511, paragraph 34.

You submitted your second application for access to documents registered as GESTDEM 2020/2853 while being aware that, at the same time, the Commission is handling your first application registered as GESTDEM 2020/2451 based on the fair solution already agreed with you in view of respecting the time-limits set by Regulation (EC) No 1049/2001. By introducing a connected application, within the same time period pending the handling of your original request, and concerning the same category of requested documents, namely decisions on confirmatory applications adopted by the Commission, it appears that you are indeed aiming at evading the fair solution you agreed with the Commission by making a, seemingly separate, request.

Moreover, your application registered as GESTDEM 2020/2853 is wide in scope in itself, as it concerns a large number of documents, which need to be assessed individually. Such a detailed analysis cannot be completed within the normal time limits set out in Article 7 of Regulation (EC) No 1049/2001.

As already explained, according to our first, preliminary estimates of the workload for the treatment of your request, and taking into account the performance of other tasks by the staff concerned, the handling of 10 documents would take approximately 30 working days⁵, covering the following steps:

- identification of the documents falling under your request;
- retrieval and establishment of a complete list of the documents identified;
- scanning of the documents;
- assessment of the content of the documents in light of the exceptions of Article 4 of Regulation (EC) No 1049/2001;
- preparation of the reply;
- redaction of those parts of the documents to which one or several exceptions apply;
- internal review and approval of the draft decision; and
- preparation of the reply and the documents for dispatch.

In this context, I would like to stress that the corresponding resources cannot be allocated to handle your request(s), so as to safeguard the interests of good administration and to ensure the proper handling of applications originating from other applicants.

Article 6(3) of Regulation (EC) No 1049/2001 provides for a possibility to confer with an applicant informally with a view to finding a fair solution when an application relates to a very long document or concerns a very large number of documents.

In accordance with the case law of the EU Courts, such a solution can only concern the content or the number of documents requested, not the deadline for replying⁶.

⁵ Taking into account other applications for access to documents and other tasks that the staff concerned are likely to have to deal with during the same period.

⁶ Judgment of the Court of Justice of 2 October 2014, *Guido Strack v Commission*, C-127/13, EU:C:2014:2250, paragraphs 26-28.

This means that the scope of the request must be reduced in a way that would enable its processing within the extended deadline of 15 + 15 working days.

As stated by the EU Courts, the Commission needs to respect the principle of proportionality and ensure that the interest of the applicant for access is balanced against the workload resulting from the processing of the application for access in order to safeguard the interests of good administration⁷.

Based on the above, with a view to reaching a fair solution, in the meaning of Article 6(3) of Regulation (EC) No 1049/2001, concerning the handling of your initial applications registered under the reference number GESTDEM 2020/2451 and 2020/2853, and to respect the time-limits set by Regulation (EC) No 1049/2001, we propose to **continue to deal with the agreed number of overall 30 documents falling within the scope of your request GESTDEM 2020/2451, i.e., the 30 decisions on confirmatory applications first adopted in the year 2019**, within the extended deadline of 30 working days, counting from the registration of your application GESTDEM 2020/2451.

Alternatively, we could propose to deal with **all documents falling within the scope of your request GESTDEM 2020/2853, i.e., the 31st to the 60th decisions on confirmatory applications adopted in the year 2019**, within the extended deadline of 30 working days, counting from the registration of your application GESTDEM 2020/2853.

In order to enable us to respect the time limits of Regulation (EC) No 1049/2001, we would ask you for a swift reply to our invitation to propose a fair solution, **within five working days at the latest**:

- by email to: Sg-Acc-Doc@ec.europa.eu.

If you have any questions concerning the invitation, you can contact us:

- by email at: Sg-Acc-Doc@ec.europa.eu.

In the absence of a reply within five working days, we will unilaterally restrict the scope of your application to those parts that can be dealt with within the extended deadline of 30 working days, counting from the registration of your respective application.

Thank you in advance for your understanding.

Yours sincerely,

Maria OLIVAN AVILES
Head of Unit

⁷ Judgment of the Court of First Instance of 13 April 2005, *Verein für Konsumenteninformation v Commission*, T-2/03, EU:T:2005:125, paragraph 102.