



## EUROPEAN COMMISSION

LEGAL SERVICE  
The Director-General

Brussels, 7 December 2020

### **By email**

Mr Elia Baggio  
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**Subject: Request for access to documents**

**Ref.:** Your request of 10 November 2020 registered on 11 November under reference GestDem 2020/6934

Dear Mr Baggio,

I refer to your application for access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>1</sup>. Your request concerns the European Commission's appeal in Case C-465/20P, *Commission v Ireland and Others*.<sup>2</sup>

#### **1. REFUSAL OF THE EUROPEAN COMMISSION'S APPEAL**

In response to your request, I regret to inform you that access cannot be granted to the document requested, since Case C-465/20P is currently pending before the Court of Justice. Consequently, the European Commission's appeal must be protected under the exception provided for under Article 4(2), second indent, of Regulation (EC) No 1049/2001 ("*protection of court proceedings*").

Article 4(2) second indent of Regulation (EC) No 1049/2001 states by way of exception that "[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".

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<sup>1</sup> OJ L 145, 31.05.2001, page 43.

<sup>2</sup> <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C%2CT%2CF&num=C-465/20P>

The purpose of the protection of court proceedings exception is to maintain the independence of the European Union's institutions in their dealings with the courts, to protect the integrity of court proceedings 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 (*API* judgment) that 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 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 serenity<sup>3</sup>.

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"*<sup>4</sup>.

Public disclosure of the European Commission's appeal in Case C-465/20P, at this stage, would undermine the pending court proceeding and its serenity. Therefore, I consider that the document requested is clearly covered by the exception provided for in Article 4(2), second indent, of Regulation (EC) No 1049/2001 and cannot be disclosed while the case concerned 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 documents<sup>5</sup>

## **2. 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, of Regulation (EC) No 1049/2001. 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 court proceedings.

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<sup>3</sup> Judgment of the Court of Justice of 21 September 2010, Joined Cases C-514/07P, C-528/07P and C-532/07P, *Sweden and Others v API and Commission*, ECLI:EU:C:2010:541, paragraphs 77, 79 and 92.

<sup>4</sup> *Ibid.*, paragraph 94.

<sup>5</sup> Judgment of the Court of Justice of 14 July 2016 in Case C-271/15P, *Sea Handling v Commission*, ECLI:EU:C:2016:557, paragraph 69.

### **3. 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:

European Commission

Secretariat-General

Transparency, Document Management & Access to Documents (SG.C.1)

BERL 7/76

B-1049 Brussels

or by email to: [sg-acc-dox@xx.xxxopa.eu](mailto:sg-acc-dox@xx.xxxopa.eu)

Yours sincerely,

*[signed electronically]*  
Daniel CALLEJA CRESPO