



EUROPEAN COMMISSION
Competition DG

The Director General

Brussels, 17.08.2022
COMP/B.2/IP/mp

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By e-mail and registered mail

Subject: Your application for access to documents – GESTDEM 2022/3794

Dear Mr. Eagleton,

Thank you for your message of 4 July 2022, registered on 4 July 2022 under GESTDEM number 2022/3794, concerning exchanges between the Cabinet of EVP Vestager & other Commission cabinets on the RFNBO Delegated Acts, in which you request access to documents in the Commission's case file in accordance with Regulation (EC) No. 1049/2001¹ ("Regulation 1049/2001").

In your message you request access to:

All documents—including but not limited to correspondence, emails, minutes, notes (hand written or electronic), audio or video recordings, verbatim reports, operational conclusions, lines to take, briefings, and presentations—related to exchanges or meetings on the Delegated Acts for renewable fuels of non-biological origin (RFNBOs) between DG COMP cabinet staff and any other cabinet staff members within the European Commission, including but not limited to the Secretariat-General, DG ENER, DG GROW and DG CLIMA cabinets from 1st September 2021 until [...], 4th July 2022.

Having examined the documents requested under the provisions of Regulation 1049/2001 regarding public access to documents, I regret to inform you that your application cannot be granted, as disclosure is prevented by an exception to the right of access laid down in Article 4 of this Regulation.

¹ Regulation (EC) N° 1049/2001 regarding public access to European Parliament, Council and Commission documents, OJ L145 of 31.5.2001, p. 43

The granting access to the documents which you seek to obtain would undermine the decision-making process of the Commission, as it would reveal preliminary views which are currently under consideration. The Delegated Acts are still under development, and the Commission's services must be able to explore all possible options in their preparation.

More specifically, access to the requested documents, which contain the views expressed by the different services in the process of preparing the Delegated Acts still to be adopted, would undermine the free exchange of views within the Commission and carry a risk of self-censorship (see, in this regard, T-403/05, *MyTravel v Commission*, at paragraphs 50-52).

Therefore, the exception laid down in Article 4(3) first subparagraph of Regulation 1049/2001 applies to these documents.

Pursuant to Article 4(3) of Regulation 1049/2001, the exception to the right of access contained in that Article must be waived if there is an overriding public interest in disclosing the documents requested. In order for an overriding public interest in disclosure to exist, this interest, firstly, has to be public (as opposed to private interests of the applicant) and, secondly, overriding, i.e. in this case it must outweigh the interest protected under Article 4 (3) of Regulation 1049/2001.

In your application you have not established arguments that would present an overriding public interest to disclose the documents to which access has been hereby denied. Consequently, the prevailing interest in this case lies in protecting the Commission's decision-making process.

I have also considered the possibility of granting partial access to the documents for which access has been denied in accordance with Article 4 (6) of Regulation 1049/2001. This is however not possible in this case since they are either entirely covered by the exception or the remaining parts after expunging the confidential information would be meaningless or illegible.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

This should be addressed within 15 working days upon receipt of this letter to the Secretariat-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]
Olivier GUERSENT