



## EUROPEAN COMMISSION

LEGAL SERVICE  
The Director General

Brussels, 17<sup>th</sup> July 2019

Mr Nicholas Haagensen  
Tøndergade 15  
4 TH Copenhagen  
Denmark

[ask+request-6941-3c4612b2@asktheeu.org](mailto:ask+request-6941-3c4612b2@asktheeu.org)

[ask+request-6942-450659ec@asktheeu.org](mailto:ask+request-6942-450659ec@asktheeu.org)

### **BY E-MAIL AND REGISTERED MAIL WITH ACKNOWLEDGMENT OF RECEIPT**

**Subject:** Request for access to documents

**Ref.:** Your requests of 30 May 2019 registered under references GestDem 2019/3264 and 2019/3265

Dear Mr Haagensen,

I refer to your above-referenced two requests for access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>1</sup>.

Your requests concern “*the legal submissions of the parties and interveners / observers in Case T-786/14<sup>2</sup>, Bourdouvali*” (GestDem 2019/3264) and in Case T-680/13<sup>3</sup>, *Chrysostomides*” (GestDem 2019/3265).

#### **1. ASSESSMENT**

In reply to your applications, I regret to inform you that access cannot be granted to the requested documents since they are covered by the exception provided for under Article 4(2), second indent of Regulation (EC) No 1049/2001 (“*protection of court proceedings*”), as explained below.

#### **2. 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> Judgment of the General Court of 13 July 2018, ECLI:EU:T:2018:487.

<sup>3</sup> Judgment of the General Court of 13 July 2018, ECLI:EU:T:2018:486.

The purpose of the exception for the protection of court proceedings is to maintain the independence of the EU institutions in their dealings with the Court and to ensure the proper course of justice.

The documents to which you request access reflect the Commission and third parties' legal arguments in Cases T-680/13 and T-786/14. On 13 July 2018 the General Court has rendered its judgments in these cases. However, they cannot be considered as closed since appeals are currently pending before the Court of Justice *i.e.* appeals C-597/18P<sup>4</sup> and C-603/18P<sup>5</sup> against the judgment in Case T-680/13 and appeals C-598/18P<sup>6</sup> and C-604/18P<sup>7</sup> against the judgment in Case T-786/14.

As the Court of Justice has stated in its judgment in Joined Cases C-514/07P, C-528/07P and C-532/07P the pleadings lodged in court proceedings are wholly specific since they are inherently part of the judicial activities of the Court. 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>8</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>9</sup>.

Public disclosure of the written submissions in Cases T-680/13 and T-786/14, at this stage, would undermine the pending court proceedings by affecting negatively the total serenity in which the exchange of arguments by the parties and the deliberations of the Court shall take place.

Therefore, I consider that the written submissions in Cases T-680/13 and T-786/14 are clearly covered by the exception provided for in Article 4(2), second indent of Regulation (EC) No 1049/2001 and cannot be disclosed while Cases C-597/18P, C-597/18P, C-603/18P and C-604/18P remain pending before the Court of Justice.

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>10</sup>.

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<sup>4</sup> <http://curia.europa.eu/juris/liste.jsf?language=fr&num=C-597/18%20P>

<sup>5</sup> <http://curia.europa.eu/juris/liste.jsf?language=fr&num=C-603/18%20P>

<sup>6</sup> <http://curia.europa.eu/juris/liste.jsf?language=fr&num=C-598/18%20P>

<sup>7</sup> <http://curia.europa.eu/juris/liste.jsf?language=fr&num=C-604/18%20P>

<sup>8</sup> Judgment of the Court of Justice of 21 September 2010 in Joined Cases C-514/07P, C-528/07P and C-532/07P, *Sweden v API and Commission, API v Commission and Commission v API*, ECLI:EU:C:2010:541, paragraphs 77, 79 and 92.

<sup>9</sup> *Ibid.*, paragraph 94.

<sup>10</sup> Judgment of the Court of Justice of 14 July 2016 in *Sea Handling v Commission*, C-271/15P, ECLI:EU:C:2016:557, paragraph 69.

### 3. 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. 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 proceedings.

### 4. 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 address below:

European Commission  
Secretariat-General  
Unit C.1. 'Transparency, Document Management and Access to Documents'  
BERL 7/076  
B-1049 Bruxelles

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Luis ROMERO REQUENA