



EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels, 8. 02. 2013

By e-mail

Mr. Holbach
ask+request-297-afc9d54f@asktheeu.org

Subject: Request for access to documents

Ref.: Your e-mail of 17 December 2012, registered on 18 December 2012 as
GESTDEM 2012/5925

Dear Mr. Holbach,

I refer to your request mentioned above requesting access to documents relating to Cases F-121/04 Guido Strack v. Commission, T-197/11P Commission c/ Guido Strack and T-198/11P, Guido Strack c/ Commission, in accordance with Regulation (EC) N° 1049/2001 regarding public access to European Parliament, Council and Commission documents¹.

1. SCOPE OF YOUR REQUEST

Your request has been made in an extensive manner and concerns all documents relating to both the administrative phase and those concerning the proceedings before the Civil Service Tribunal (CST) and the General Court, including contracts with the external lawyers.

As you have been informed, the part of your request concerning the administrative phase was attributed to Directorate-General Human Resources and security (HR DG) and registered as GESTDEM 2013/213 and the part referring to the courts proceedings was transferred to the Legal Service and registered as GESTDEM 2012/5925.

2. PROPOSAL FOR A FAIR SOLUTION

At the end of December 2012, the Commission received three requests for access to all documents concerning 10 court cases, to which Mr. Strack was a party. These requests originated from you and two other members of the governing body of the network "Whistleblower", whose president is Mr. Strack².

¹ OJ L 145, 31.05.2001, page 43.

² This information is publicly available on the website
<http://www.whistleblower-net.de/uber-uns/vorstand/>

After conducting a preliminary assessment of your request, it appeared, on the one hand, that it involved a large number of documents and, on the other, that they would require a very careful and in-depth assessment since they were likely to contain sensitive personal data to be protected under Regulation 1049/2001.

Taking into account the workload resulting from your request and considering the aforementioned two additional applications, by e-mail of 18 January 2013 the Legal Service informed you that it would not be in a position to reply to your request within the deadline foreseen at article 7 of Regulation 1049/2001. Therefore, in accordance with Article 6(3) of this Regulation it invited you to reconsider your request in limiting and specifying its scope and to indicate a priority order to deal with the requested documents.

By e-mail of 23 January 2013 you refused the referred proposal and indicated the 8 of February 2013 as the deadline to reply to your request. This deadline corresponds to the extended deadline foreseen at article 7(3) of Regulation 1049/2001, should the Legal Service have asked for it.

In this respect, I can assure that the Legal Service has done its utmost to deal with your request. However, the Commission cannot privilege one applicant and has to guarantee that all the requests are responded within the deadlines of Regulation 1049/2001, or where not possible, to seek for a fair solution that reconciles the interests of the applicant with those of good administration. Therefore, the Legal Service has first proceeded to the assessment of the main documents concerned by your request, i.e. the Commission's pleadings submitted to the Court. At present it is able to send a first reply regarding documents 1, 2, 3, 9, 10, 11, 12, 17, 19, 20, 21, 22, 23, 24, 25, 26 and 31.

As regards the rest of the documents concerned by your request, the Legal Service proposes you, in accordance with article 6(3) of Regulation 1049/2001, to send a separate reply by the end of March. These documents relate mainly to the fees and contracts with the external lawyer as well as some documents relating to the amicable settlement procedure, which in the end did not succeed.

3. DOCUMENTS CONCERNED BY YOUR REQUEST RELATING TO THE COURT'S PROCEEDINGS

After the examination of the Legal Service's files, the following documents have been identified as falling within the scope of your request:

Affaire F-121/07 – Strack c/ Commission

1. JUR(2007)46066 – Note to ex-DG ADMIN DG sending the application
2. LETT(2007)45021 – Response by ex-DG ADMIN
3. JUR(2007)46102 – Authority
4. JUR(2007)46143 – Note to the attention of M. Chêne (ex-DG ADMIN) on the amicable settlement procedure
5. JUR(2007)46150 – Letter to the CST on the amicable settlement procedure
6. JUR(2008)45041 – Letter to the CST on the amicable settlement procedure
7. JUR(2008)45158 – Letter to the CST on the amicable settlement procedure
8. JUR(2008)45249 – Letter to the CST on the amicable settlement procedure
9. JURM(2008)9107 – Objection of inadmissibility
10. CONT(2009)7024 – Order of 17 September 2009 (Objection of inadmissibility and lack of jurisdiction)
11. PVR(2009)751 – Authority

12. JURM(2009)9201 – Defence
13. JUR(2009)45835 – Letter sending legal assistance contracts SJ/2009/1411, SJ/2009/1412, SJ/2009/1438, SJ/2009/1439 et SJ/2009/1440
14. JUR(2009)45840 – Legal assistance contract (Case F-121/07)
15. LETT(2010)5501 – Attorney's fees invoice
16. LETT(2010)5945 – Attorney's fees invoice
17. Ares(2010)823661 – Authority
18. Ares(2010)900388 – Letter sending legal assistance contract SJ/2010/1732

Affaire T-197/11P – Commission c/ Strack

19. C(2011)1670 – Commission decision to appeal against the judgment given by the CST on 20 January 2011 in Case F-121/07
20. Ares(2011)363185 – Appeal + Authority
21. Ares(2011)770340 – Letter to the General Court: Request for authorisation to file a Reply
22. Ares(2011)905523 – Reply
23. Ares(2011)1142760 – Letter to the General Court: oral hearing
24. Ares(2013)33766 – Information note on the judgment

Affaire T-198/11P – Strack c/ Commission

25. Ares(2011)767212 – Authority
26. Ares(2011)788681 – Response and observations on the request for joinder
27. Ares(2011)863895 – Letter sending legal assistance contracts SJ/2011/1952
29. Ares(2011)883346 – Legal assistance contract SJ/2011/1952
29. Ares(2011)1085143 – Attorney's fees invoice
30. Ares(2012)210783 – Letter to the lawyer sending the request to stay proceedings
31. Ares(2012)282460 – Observations on the request to stay proceedings

4. SCOPE OF THE PRESENT REPLY

As indicated under point 3 above, the present reply concerns the documents under numbers 1, 2, 3, 9, 10, 11, 12, 17, 19, 20, 21, 22, 23, 24, 25, 26 and 31.

5. ASSESSMENT

After a concrete assessment of these documents, I am pleased to inform you that, in accordance with Regulation, full access can be granted to them with the exception of the following personal data which is covered by the exception provided for in Article 4(1)(b) ("*protection of personal data*")³ of Regulation 1049/2001 in accordance with the European Union (EU) legislation regarding the protection of personal data:

- document under number 9 (reference JURM(2008)9107): the name of the doctor in the Medical Service (page 7).
- document under number 12 (reference JURM(2009)9201): the name of the doctor in the Medial Service (page 3) and the name of a doctor chosen by the applicant (page 4).

³ *"The institutions shall refuse access to a document where disclosure would undermine the protection of: [...] (b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data".*

- document under number 26 (reference Ares(2011)788681): the name of the Judge-Rapporteur (pages 4 and 5).

Disclosure of this information, which was not disclosed nor by the TFP either by the General Court, would undermine the legitimate privacy rights of the concerned persons and, therefore, would be contrary to Article 4(1)(b) of Regulation 1049/2001. Indeed, according to Article 8(b) of Regulation No. 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁴, personal data shall only be transferred to recipients if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced. In the present case, I see no elements capable of showing the necessity for the refused data to be disclosed⁵.

Accordingly, you will find enclosed a copy of the documents under numbers 1, 2, 3, 11, 17, 19, 20, 21, 22, 23, 24, 25 and 31 as well as an expunged version of documents numbers 9, 12 and 26. Please note that these documents cannot be reproduced or disseminated for commercial purposes without prior consent given by the Commission.

Document under number 10 is a public document which is available on the website of the Court.

6. THIRD PARTIES' DOCUMENTS: documents submitted by the applicant and documents originating from the Courts

Regarding, on the one hand, the submissions lodged by the applicant to the CST and to the General Court in Cases F-121/04, T-197/11P and T-198/11P and, on the other hand, the documents originating from those courts, the Commission considers that they do not fall within the scope of Regulation 1049/2001. Regulation 1049/2001 is based on Article 255⁶ of the Treaty establishing the European Community which has been replaced by Article 15 of the Treaty on the functioning of the European Union (TFUE) with the entry into force of the Lisbon Treaty on 1 December 2009. Whilst Article 15(3) TFUE extends the right of access to the documents of the Union institutions, bodies, offices and agencies, its fourth paragraph provides that *"The Court of Justice of the European Union [...] shall be subject to this paragraph only when exercising their administrative tasks"*.

It is therefore clear that even after the adaptation of Regulation 1049/2001 to the Lisbon Treaty, documents submitted by the third parties such as, in this case, the submissions made by the applicant as well as the documents originating from the Court of Justice of the European Union in the framework of court proceedings, will not fall under the scope of the regime for public access to documents. Indeed, the Commission itself received a

⁴ OJ L 8, 12.01.2001, page 1.

⁵ Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, *European Commission v The Bavarian Lager Co. Ltd* (paragraphs 77-78), *European Court reports 2010 page I-06051*.

⁶ This article applied only to the European Parliament, the Council and the Commission but no to the European Court of Justice.

copy of these pleadings and documents only by virtue of its quality as party to the proceedings, pursuant to Article 20 of the Protocol on the Statute of the Court of Justice⁷.

Furthermore, as regards pleadings submitted in court proceedings, the Court has stated in its judgment in Joined Cases C-514/07P, C-528/07P and C-532/07P "[...], the Rules of Procedure of EU Courts provide for procedural documents to be served only on the parties to the proceedings [...]. It is clear, therefore, that neither the Statute of the Court of Justice nor the above Rules of Procedure provide for any third-party right of access to pleadings submitted to the Court in court proceedings"⁸.

In the light of the above, the Commission takes the view that, as far as court proceedings are concerned, the scope of Regulation 1049/2001 is limited to the institution's own submissions, whereas submissions lodged by the other parties as well as the documents originating from the Court of Justice of the European Union do not fall within its scope. Otherwise, the purpose of both Article 15 TFUE and the Rules of Procedure of the Court of Justice would be undermined.

Consequently, I regret to inform you that the submissions lodged by the applicant and the documents originating from the CST and the General Court in Cases F-121/04, T-197/11P and T-198/11P cannot be made available to you.

7. MEANS OF REDRESS

Should you wish the position regarding the refused information to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretary-General at the address below.

The Secretary-General will inform you of the result of such review within 15 working days from the date of registration of your request. You will either be given access to the refused parts or your request will be rejected, in which case you will be informed of what further action is open to you.

All correspondence should be sent to the following address:

The Secretary General
European Commission
B-1049 BRUSSELS
Sg-Acc-Doc@ec.europa.eu

Yours sincerely,



Luis ROMERO REQUENA

Enclosures: 16 documents

⁷ OJ C 115, 09.05.2008, page 215.

⁸ Judgment of the Court of 21 September 2010 in Joined Cases C-514/07P, C-528/07P and C-532/07P Sweden v API and Commission (paragraphs 98 and 99) published in the European Court reports 2010 Page I-08533.