



EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels, 27. 03. 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. FIRST REPLY TO YOUR REQUEST

By letter of 8 February 2013 (reference Ares(2013)166468), the Legal Service sent you a first reply relating to documents under numbers 1, 2, 3, 9, 10, 11, 12, 17, 19, 20, 21, 22, 23, 24, 25, 26 and 31 of the following list, corresponding to the documents 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)

¹ OJ L 145, 31.05.2001, page 43.

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
28. 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

2. SCOPE OF THE PRESENT REPLY

The present reply concerns the documents under numbers 4, 5, 6, 7, 8, 13, 14, 15, 16, 18, 27, 28, 29 and 30.

3. ASSESSMENT

3.1 Documents under numbers 13, 14, 15, 16, 18, 27, 28, 29 and 30 (legal assistance contracts, attorney's fees invoices and letter to the lawyer)

After a concrete assessment of these documents, I am pleased to inform you that, in accordance with Regulation, full access can be granted to documents under numbers 13, 14, 15, 16, 18 and 30, with the exception of the bank account number and the signature of the lawyer that have been removed from documents under numbers 14, 15, 16 and 18.

Indeed, this personal data is covered by the exception provided for in Article 4(1)(b) ("*protection of personal data*")² of Regulation 1049/2001 in accordance with the European Union (EU) legislation regarding the protection of personal data.

² "*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*".

Disclosure of this information, would undermine the legitimate privacy rights of the concerned person 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 data³, 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 prejudiced⁴. In the present case, I see no elements capable of showing the necessity for the refused data to be disclosed.

As regards documents under numbers 27, 28 and 29, I regret to inform you that they cannot be disclosed since they are covered by the exception provided for in Article 4(2), second indent of Regulation 1049/2001 ("*the protection of the court proceedings*")⁵. Indeed, even though the proceedings in Case T-198/11P have been closed by the judgment of the General Court of 13 December 2012, these documents will be still subject of discussion in the context of the procedure for the recovery of costs, which is presently fully ongoing. Therefore, disclosure of these documents at this stage would be adversely affecting the decisions to be taken in the context of the referred procedure. In addition, disclosure of the refused documents would also weaken the Commission position in any possible dispute relating to this matter, including its right of defence. This risk is not hypothetical but a real and concrete one.

3.2. Documents relating to the "amicable settlement" procedure

Documents under numbers 4, 5, 6, 7 and 8 were drawn up by the Commission in the context of the procedure with a view to seeking an amicable settlement of the Cases F-118/07, F-119/07, F-120/07, F-121/07 and F-132/07, *Guido Strack v. Commission*, that were pending before the Civil Service Tribunal (CST). However, this attempt to reach an amicable settlement was unsuccessful.

Document under number 4 is a note to the attention of the Director General of the ex-Directorate-General for Administration (ex-DG ADMIN) summarising the draft agreement contained in the minutes of an informal meeting hold by the parties at the CST and asking for observations. Documents under numbers 5, 6, 7 and 8 are Commission's submissions to the CST. Therefore, all these documents concern Cases F-118/07, F-119/07, F-120/07, F-121/07 and F-132/07.

Case F-118/07, *Guido Strack v. Commission*, seeking the payment for material and non-material damages, including damage to the applicant's health, is still pending before the CST.

Documents under numbers 4, 5, 6, 7 and 8 are, therefore, covered by the exception provided for in Article 4(2) second indent of Regulation 1049/2001 ("*the protection of court proceedings*")

³ OJ L 8, 12.01.2001, page 1.

⁴ 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.

⁵ "[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".

The purpose of the "*court proceedings*" exception is to maintain the independence of the EU institutions in their dealings with the Court 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 that the pleadings lodged before the Court of Justice in court proceedings are wholly specific since they are inherently more a part of the judicial activities of the Court and that 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 serenity⁶.

In addition, the Court has recognized that "*[i]t is therefore appropriate to allow a general presumption that disclosure of the pleadings lodged by one of the institutions in court proceedings would undermine the protection of those proceedings, [...], while those proceedings remain pending*"⁷.

Since Case F-118/07 is still pending before the Court, I consider that documents under numbers 4, 5, 6, 7 and 8, which have been drawn up by the Commission solely for the purpose of the referred specific proceedings, are clearly covered by the exception provided for in Article 4(2) second indent of Regulation 1049/2001 and, consequently, cannot be disclosed at this stage of the proceedings.

Furthermore, I would like to point out that according to Article 69(1) first and third paragraphs of the Rules of Procedure of the European Union⁸, where the parties come to an agreement before the Tribunal or the Judge-Rapporteur as to the solution putting an end to the dispute, the President, at the request of the applicant and the defendant, shall set out the terms of the agreement in the order removing the case from the register. It is therefore clear that, *a contrario*, where the parties don't come to an agreement, such in the present case, the observations, suggestions, proposals and concessions made by the parties and contained in the documents drawn up for the purposes of the amicable settlement, are not subject of such a publication and must, therefore, remain confidential.

3.3. Documents disclosed or partially disclosed

Accordingly, please find enclosed a copy of documents under numbers 13 and 30 as well as the expunged version of documents under numbers 14, 15, 16 and 18. I must however remind you that these documents cannot be reproduced or disseminated for commercial purposes without prior consent given by the Commission.

4. OVERRIDING PUBLIC INTEREST

Pursuant to Article 4(2) of Regulation 1049/2001, the exceptions 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 interests protected

⁶ 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, API v Commission and Commission v API (paragraphs 77, 79 and 92), European Court reports 2010, Page I-08533.

⁷ Paragraph 94.

⁸ http://curia.europa.eu/jcms/upload/docs/application/pdf/2010-04/rp_14_04_2010_en.pdf

under Article 4(2). In the present case, I see no elements capable of showing the existence of an overriding public interest in disclosure of documents under numbers 4, 5, 6, 7, 8, 27, 28 and 29. that would outweigh the public interest in the protection of the court proceedings, including the institution's rights of defence.

5. 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 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: 6 documents