



**Ildikó Gáll-Pelcz**

Vice-President of the European Parliament

**REGISTERED LETTER**  
**WITH ACKNOWLEDGEMENT OF RECEIPT**

D 313187 30.08.2017

Andreas Pavlou  
Calle Cava de San Miguel 8, 4c  
E - 28005 Madrid

**Subject:** Your request for public access to documents  
Our ref.: **A (2017) 8791 C** (to be quoted in future correspondence)

Dear Mr Pavlou,

On 12 July 2017, the European Parliament received your application for access, under Regulation (EC) No 1049/2001<sup>1</sup>, to documents relating to the Working Group set up by the Bureau to study potential changes to the list of expenses defrayable from the General Expenditure Allowance (GEA).

On 31 July 2017, Parliament took the decision to grant partial access to the documents relevant to your application. It granted public access to the draft agenda of the constitutive meeting of the Working Group, which took place on 4 July 2017 in Strasbourg, the document outlining the composition and mandate of the Working Group, the document containing extracts of EP Resolutions and the current list of expenses which may be defrayed from the General Expenditure Allowance. However, it refused access to the note to the Bureau with the reference PE 602.267/BUR and a list of questions, on the basis of Article 4(3) of Regulation (EC) No 1049/2001.

On 16 August 2017 (Parliament's administration was closed on 15 August 2017), Parliament received your confirmatory application asking the institution to reconsider its refusal to grant public access to the note to the Bureau and the list of questions.

Pursuant to Rule 116(4) of the Rules of Procedure of the European Parliament, and Article 5 of the Decision of the Bureau of the European Parliament, dated 28 November 2001<sup>2</sup>, on Rules governing public access to European Parliament documents, I, as Vice-President responsible for matters relating to access to documents, am responding to your confirmatory application on behalf and under the authority of the Bureau.

<sup>1</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145 of 31.05.2001, p. 43

<sup>2</sup> Rules governing public access to European Parliament documents, Bureau decision of 28 November 2001, OJ C 216, 22.7.2011, p. 19

Assessment of your confirmatory application, the protection of on-going decision-making process

In your application, you contend that Parliament failed to apply Article 4(3) correctly in that it failed to demonstrate how the decision-making process would be seriously undermined by the publication of the documents at stake. You also claim that there is an overriding public interest that would warrant their publication anyway. And, in addition, you assert that Parliament failed to consider partial access to those documents.

Parliament assessed your claims in the light of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents. The regulation strikes a balance between transparency and the need to protect specific interests, like an institution's ability to work properly. In particular, it establishes that under certain circumstances, an institution's ability to deliberate with a view to adopting a decision should be protected from the effects of full publicity and that the documents drafted to reach such a decision should not be published.

Indeed, the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 provides that *"access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure"*.

Hence, where Parliament is asked to provide access to documents closely related to the taking of a decision by a body of the institution, such as the Bureau, it examines whether the release of the documents at stake could specifically and effectively undermine its decision-making process. It is what Parliament did when it assessed your application. And it found that the disclosure of the note and the list of questions would specifically and effectively undermine its decision-making process.

The note of the Secretary-General with the reference PE 602.267/BUR was submitted to the Bureau to assist it in the performance of its tasks. It discusses the rules on the expenses which may be defrayed from the General Expenditure Allowance and sets out a proposal. It contains background information, advice and decision proposals on the matter at stake.

The "list of questions and items to be discussed by the ad hoc group" is a document of the Working Group set up with the specific task of discussing and exploring the possibilities to change the rules on expenses defrayable from the General Expenditure Allowance. The document sets out preliminary views in a bullet point list, questions to be answered and issues to be tackled by the group.

In a context where the rules on the GEA and more generally the use of allowances by Members are intensely debated and give rise to litigation, as is illustrated by the recent cases publicized in the press, it is of the utmost importance that any decision on those matters be taken on solid basis and after thorough and informed deliberations. In this context, Parliament considers that the two documents concerned by your confirmatory application would seriously undermine its ability to discuss GEA issues thoroughly, and seriously weaken the institution's decision-making process.

Public disclosure of the requested note as well as the list of questions would entail that the views expressed therein could be compared with the eventual decision on future expenses. The decision is not yet taken and it may diverge from the view points set out in both documents. If they were disclosed to the public, the risk of seeing views or interpretations

expressed therein used to challenge the actual decision or to extract concessions from the services applying it would become very high.

But it is not only the eventual decision itself that could be affected by the publication of the documents concerned by your application. If the note and the list of questions were to be published, the debate and the preliminary deliberations within Parliament would also inevitably be skewed.

The services involved in the drafting of the note to the Bureau would practise self-censorship in the future. They would be pressured into avoiding to express some contrasted views or novel proposals for fear that those views or proposals could be used to undermine the eventual decision to be taken by the Bureau. Very concretely, for example, Parliament's services might then avoid putting forward ideas which the Bureau could feel bound to follow under a political pressure generated by their publicity. As a result, the quality of the preliminary debates and discussions within the institution would truly suffer.

In a similar fashion, if the list of questions was to be published, the members of the Working Group would undoubtedly refrain from making some pointy or singular queries to avoid generating controversy, triggering political backlash or undermining the final decision. A direct consequence of the publicity of such a document would be the displacement of at least a significant part of the debate and the deliberations from a formal and organised setting to an informal setting. It goes without saying that the quality of Parliament's deliberations would greatly suffer from such a situation.

Against those findings, Parliament takes the view that disclosing both documents at stake would seriously and effectively undermine the protection of the institution's decision-making process in the sense of the relevant exception as it would impede it to carry out proper preliminary deliberations and consultations.

#### Overriding public interest in disclosure

In your confirmatory application, you claim that there is an overriding public interest in disclosure of both documents, and more generally "in the oversight and participation in the rules around the spending of public money particularly on something like the General Expenditure Allowance".

However, Parliament holds the view that such general considerations cannot provide an appropriate basis for establishing that, in the present case, the principle of transparency is of especially pressing concern and could thus prevail over the reasons justifying the refusal to grant access to the requested document<sup>3</sup>. In particular, as high as the public interest in the spending of public funds by MEPs might be, making such internal deliberations subject to public scrutiny before a decision has been adopted would entail the risk that the Bureau would not be able to reach a decision at all.

Against that background, Parliament has to consider that the interest that you invoke does not outweigh the interest in the protection of Parliament's internal decision-making process and cannot be considered as an overriding public interest within the meaning of Article 4(3) of Regulation (EC) No 1049/2001.

Parliament also envisaged to grant partial access to the two documents concerned by your confirmatory application, in accordance with Article 4(6) of Regulation (EC) No 1049/2001. However, it concluded that publication of any part of the documents except their heading

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<sup>3</sup> Herbert Smith Freehills v Council, case T-710/14, EU :C :2014 :409, paragraph 72

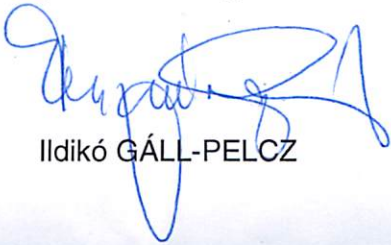
would undermine the protected interest at stake, with the result that partial disclosure would be pointless.

Conclusion

As a consequence of the above, I regret to inform you that access to the requested documents cannot be granted as their disclosure would impinge upon the protection of Parliament's decision-making process provided for by the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001.

Finally, I would like to draw your attention to the means of redress against this decision according to Article 8 of Regulation (EC) No 1049/2001. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in the Treaty on the Functioning of the European Union. I equally draw your attention to the fact that filing a complaint with the European Ombudsman does not have suspensory effect.

Yours sincerely,



Ildikó GÁLL-PELCZ