



**EUROPEAN COMMISSION**

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Single Market Policy, Regulation and Implementation  
Director General

Brussels,  
GROW/B1 (2016)3268304

*By registered mail with acknowledgment of receipt*

Mr. Nikolai Pushkarev  
European Public Health Alliance  
To the attention of Nikolai Pushkarev  
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Belgium

*Advanced copy by mail:*

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**Subject: Your application for access to documents – Ref GestDem No 2016/2742**

Dear Mr. Pushkarev,

We refer to your e-mail dated 13/05/2016 in which you make a request for access to documents, registered under the above mentioned reference number. Your request to access to documents (under Regulation 1049/2001)<sup>1</sup> concerned the UK's voluntary scheme for front nutrition labelling of food products with the use of colour coding ("traffic light labelling"). In addition, you may of course obtain access to other relevant information yourself that is publicly available.

Your application concerns the following documents:

1. Letter of formal notice sent on 02/10/2014: SG (2014) D/14360
2. Reply of the UK authorities sent on 01/12/2014: INF (2014) 109482
3. Correspondence with the UK authorities sent on 20/11/2015: Ares (2015) 5290154
4. Correspondence with the UK authorities: SG- EU PILOT – DOC- 2014-1852
5. Correspondence with the UK authorities sent on 10/11/2015

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<sup>1</sup> Regulation 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, 31.5.2001, p. 43. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:145:0043:0048:EN:PDF>

6. Correspondence with third parties sent on 10/06/2015: Ares (2015) 2430364
7. Correspondence with third parties sent on 02/07/2015: Ares (2015) 2779419
8. Correspondence with third parties sent on 21/09/2015: Ares (2015) 3892963
9. Correspondence with third parties sent on 28/05/2015: Ares (2015) 2227015
10. Correspondence with the UK authorities: SG- EU PILOT – DOC- 2014-1852
11. Correspondence with the UK authorities sent on 10/11/2015
12. Correspondence with third parties 23/02/2015: Ares (2015) 755609 (10 documents)

Having examined your request under the provisions of Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents, I regret to inform you that your application cannot be granted, as disclosure of the relevant documents is prevented by one of the exceptions to the right of access laid down in Article 4 of this Regulation.

The exception which applies is Article 4(2) of Regulation 1049/2001 providing that the institutions shall refuse access to a document where disclosure would undermine the protection of "courts proceedings and legal advice" and the "purpose of inspections, investigations and audits" "unless there is an overriding public interest in disclosure". The applicability of this exception to the present case follows from the *Petrie* judgment (T-191/99), where the General Court held that the "Member States are entitled to expect the Commission to guarantee confidentiality during investigations which might lead to an infringement procedure. This requirement of confidentiality remains even after the matter has been brought before the Court of Justice, on the ground that it cannot be ruled out that the discussions between the Commission and the Member State in question regarding the latter's voluntary compliance with the Treaty requirements may continue during the court proceedings and up to the delivery of the judgment of the Court of Justice. The preservation of that objective, namely an amicable resolution of the dispute between the Commission and the Member State concerned before the Court of Justice has delivered judgment, justifies refusal of access to the letters of formal notice and reasoned opinions drawn up in connection with the Article [258 TFEU] proceedings on the ground of protection of the public interest relating to inspections, investigations and court proceedings, which comes within the first category of exceptions in Decision 94/90"<sup>2</sup>.

Disclosure of the documents in question would undermine the protection of the purpose of the ongoing investigations; indeed, disclosure of the documents at this point in time would be likely to change the nature and progress of that procedure and would affect the climate of mutual trust between the national authorities and the Commission, which is required to enable them to resolve the case without having to refer it to the Court of Justice.

We have considered whether partial access could be granted. Nevertheless, we are of the opinion that the documents at stake are entirely covered by the exception.

The exceptions laid down in Article 4(2) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. In our opinion, the public interest in making the content of these documents public does not outweigh the harm disclosure would cause to the purpose of the ongoing investigation.

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<sup>2</sup> Decision 94/90 was subsequently replaced by Regulation 1049/2001.

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.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission  
Secretary-General  
Transparency unit SG-B-5  
BERL 5/327  
B-1049 BRUSSELS

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

Yours faithfully,

Lowri EVANS