

They are doing their utmost

Trying to get access to documents on the Recovery and Resilience Facility from the EU Commission

Hans-Martin Tillack, WELT, #RecoveryFiles, Dataharvest 2022, @hmtillack

I regret to have to inform you that we are not able to respond within the extended time-limit, as we have not yet finalised internal consultations. Please note that these consultations are necessary in order to explore feasible options on how to handle the voluminous scope of your request in light of the sensitivity of the documents requested and taking into account that they originate from a third party, which has to be consulted on the possible disclosure.

However, I can assure you that we are doing our utmost to provide you with a final reply as soon as possible.

I regret this additional delay and sincerely apologise for any inconvenience this may cause.

EU Regulation 1049/2001

- This is the legal basis for access to documents of EU Parliament, Council and Commission. It was adopted in May 2001 under the Swedish Presidency of the Council. The Swedes know a lot about transparency as their earliest legislation on access to documents is from 1766. The EU institutions are still learning. Or so we hope.

31.5.2001

EN

Official Journal of the European Communities

L 145/43

**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**

From the work program of the Swedish Presidency in 2001

Transparency

It is of fundamental importance to the Swedish Presidency that the vision of a more open Union is realised. More transparent working methods must be introduced and information must be more readily available so that citizens can obtain real insight into European cooperation. The Treaty of Amsterdam created a legal basis for rules on public access to documents in the European Parliament, the Council and the Commission. Sweden attaches great importance to ensuring that the relevant legal instrument that is to be adopted not later than May 2001 leads to improved access to documents kept at EU institutions. In connection with work on the legal instrument, Sweden intends to keep in close contact with the European Parliament which has shown considerable interest in the question of transparency. As a result of this legal instrument, special provisions on access to its documents will be formulated to be incorporated into the Council's code of procedure. Enhanced protection of freedom of speech for EU officials will be discussed within the framework of efforts to achieve greater transparency. Attention will also be drawn to the significance of clear and intelligible texts for an open and effective Union.

No transparency please, we are Germans

Regulation 1049/2001 is better than – for example – the German federal law on access to information:

- No fees
- Binding time-limit of 15 plus 15 working days

Processing of initial applications

1. An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. Within 15 working days from registration of the application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal and inform the applicant of his or her right to make a confirmatory application in accordance with paragraph 2 of this Article.

I have often used it, since my time as a EU correspondent in Brussels for „Stern“ magazine until 2004. In 2012 I could prove thanks to documents to which I got access that Eurostat had warned the Commission since 1999 that Greece might fiddle the figures on their budget.



Deshalb müssen v
 Akten aus dem Kanzleramt beweisen: Die
 EU-Kommission in Brüssel wollten offenb
 GRIECHISCHEN EUROBEITRITS nicht se



NOTE À L'ATTENTION DE MONSIEUR RAVASIO – DIRECTEUR GENERAL DGII

La mission d'Eurostat en Grèce les 13 et 14 mai, dans le cadre de la procédure concernant les déficits excessifs, conduit aux conclusions suivantes :

1. DEKA

Il convient de classer DEKA dans le secteur des Administrations publiques et non dans le secteur des entreprises comme actuellement prévu dans les comptes nationaux de la Grèce.

En effet, les activités principales de DEKA : privatisation de certaines entreprises publiques et remboursement de la dette publique, sont exercées sur instruction de l'Etat, sans aucune autonomie de DEKA par rapport à son propriétaire.

Le compte de résultat de DEKA met en évidence que sur la période de septembre 1997 (correspondant à la création de DEKA) à décembre 1998 (16 mois), un montant de 218 milliards (0,6% du PIB en 1998) a été transféré par DEKA à d'autres entreprises. L'impact sur le déficit du reclassement de DEKA dans les Administrations publiques est à hauteur de ce montant de 218 milliards, réparti sur les années 1997 et 1998 compte tenu des versements effectués au cours de chacune de ces deux années.

2. Sécurité Sociale

Au stade actuel, des doutes persistent sur l'importance du surplus de la Sécurité Sociale, notifié par les autorités grecques.

How to investigate the RRF?

Decisions on the national programs as part of the RRF were negotiated between national governments and the EU Commission, with a final vote in the Council. The EU Parliament had no say on them and most national parliaments neither. So in order to find out how decisions were taken one had to ask for documents from the national governments and the EU Commission. I asked the Commission on 14 July 2021 for the documents on the evaluation of the German plan, worth 25,6 billion euro. I also asked the German Ministry of Finance.

Request



o Tillack, Hans-Martin <hmt@hmtillack.de>

An: o "Sg-Acc-Doc@ec.europa.eu"

Mittwoch, 14. Juli 2021 um 13:53

→ Sie haben diese Nachricht am "15.10.21, 17:38" weitergeleitet.

Weiterleitung anzeigen

Dear Madam or Sir,

Based on Regulation 1049/2001 and Regulation 1367/2006 I would like to ask for access to the following information which might at least partly concern also "activities affecting or likely to affect" the "state of the elements of the environment" according to Regulation 1367/2006. This includes:

All documents held by the Commission on the evaluation of the German recovery and resilience plan as part of the European Recovery and Resilience Facility (RRF), until the decision of the Commission on 22 June 2021 to endorse the plan.

Should you encounter any difficulties in interpreting or processing my request, I am ready to discuss ways to clarify or amend it to keep the effort required on your part to the necessary minimum.

Please send me an acknowledgement of receipt for this request, as foreseen by Article 7 (1) of Regulation 1049/2001. Thank you for your help.

As you can see I used this mail address:

Sg-Acc-Doc@ec.europa.eu

The Commission wants you to use a form on their website



The screenshot displays the 'REGISTER OF COMMISSION DOCUMENTS' website. At the top, there is a header with the European Commission logo and the title 'REGISTER OF COMMISSION DOCUMENTS'. Below the header, a breadcrumb trail reads: 'European Commission > Transparency > Access to documents > Register of Commission documents > Document request'. On the left side, there are two buttons: 'Document search' and 'Privacy statement'. The main content area is titled 'Document request' and contains a box with the following text:

- Please note that some documents of the Commission may be covered, in whole or in part, by the exceptions to public access defined in Regulation 1049/2001. In some cases, a general presumption of non-accessibility has been recognised by the EU Courts and may be used by the Commission to refuse access, in particular for documents forming part of the following procedures: pending infringements, State aids, merger and cartel investigations and pending court cases, bids submitted by tenderers, exchanges with national competition authorities and OLAF investigations.
- All your data is handled in conformity with the provisions and requirements of the data protection Regulation (EU) 2018/1725.
- We reserve the right to refuse to deal with your request in case of incomplete or incorrect data in the above electronic form.

Below this box, there is a section for 'Mandatory information' which includes a form for the 'Originator of the request'. The form fields are:

- * First name:
- * Surname:
- * Email:
- * Address:
- * Postal code: * City:
- * Country:

They even ask you to fill out a separate form for each document. But you do not have to do that. They simply want to make access difficult for you.

Requested document:

Please use a separate form for each document you require.

Responsible Directorate-General or service:

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Language requested:

English (en) ▾

Language
(EN or FR) if the language
requested is not available):

English (en) ▾

* Mandatory information

View before sending

Clear form

It took the Commission 15 days to respond

Betreff: Your application for access to documents - GESTDEM 2021/4558 - clarification request - Ares(2021)4962702

Datum: Mittwoch, 4. August 2021 um 16:03:01 Mitteleuropäische Sommerzeit

Von: SG RECOVER ATD

An: Tillack, Hans-Martin

Dear Sir,

We refer to your e-mail of 14 July 2021 in which you make a request for access to documents, registered on 14 July 2021 under the above mentioned reference number.

The description given in your application would need to be further specified to enable us to identify concrete documents, which would correspond to your request.

We therefore invite you, in accordance with Article 6(2) of Regulation (EC) No 1049/2001 regarding public access to documents, to provide us with more detailed information on the documents you request, such as references, dates or periods during which the documents would have been drawn up, persons or bodies who drafted the documents.

If you need assistance in clarifying or specifying your application, you can contact us by email to SG-RECOVER-ATD@ec.europa.eu.

My reply from the same day

Datum: Mittwoch, 4. August 2021 um 17:41:31 Mitteleuropäische Sommerzeit

Von: Tillack, Hans-Martin

An: SG RECOVER ATD

Dear SG RECOVER ACCESS TO DOCUMENTS TEAM,

Thank you for your mail. Unfortunately I was not able to understand your request.

I have asked for all documents held by the Commission on the evaluation of the German recovery and resilience plan as part of the European Recovery and Resilience Facility (RRF), which were created or arrived at your offices until the decision of the Commission on 22 June 2021 to endorse the plan.


To my knowledge there is only one European Recovery and Resilience Facility (RRF) which is in preparation since 2020 and there is only one member state called Germany for which you approved the national plan on 22 June 2021:

https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3133

I have asked for all documents that you hold on the evaluation of this plan for the time which preceded the decision of 22 June 2021. I think I could not have been more clear.

Therefore I would like to kindly ask to finally start processing my request.

The Commission was still unhappy with my request and asked to me reduce the scope of it



EUROPEAN COMMISSION
SECRETARIAT-GENERAL
Recovery & Resilience Task Force
Director - Recovery & Resilience I

Brussels
SG.RECOVER.B.3/JS

Subject: Your application for access to documents – GESTDEM 2021/4558

Dear Sir,

We refer to your e-mail of 14 July 2021 in which you make a request for access to documents, registered on 14 July 2021 under the above-mentioned reference number.

Based on the above-mentioned provision, we would kindly ask you to specify the objective of your application and your specific interest in the documents requested², and whether you could narrow down the scope of your application (i.e. the subject matter(s) and/or timeframe covered), so as to reduce it to a more manageable amount of documents.

In order to help you to narrow down your application, please note that at least the following categories of documents have been identified as falling under the scope of your request:

- Different versions of the draft Recovery and Resilience Plans
- The main draft versions of the Council Implementing Decision and the accompanying Staff Working
- Minutes of high level meetings with the German administration

They also admitted that they had not even started to identify the documents that would be covered by my request – and this after three weeks

Please note that the length of each document may vary and include more than several hundred pages. Their assessment can therefore be very lengthy.

According to our first estimates, the handling of your request would take more than 30 working days³, broken down as follows (at the minimum):

- identification of the documents falling under your request: 2 working days;
- retrieval and establishment of a complete list of the documents identified: 2 working days;
- assessment of the content of the documents in light of the exceptions of Article 4 of Regulation (EC) No 1049/2001: 10 working days;
- third-party and Member State consultations under Article 4(4) and 4(5) of Regulation (EC) No 1049/2001: 15 working days (depending on the speed of reply of the third parties);
- final assessment of the documents in light of the comments received: 5 working days;
- drafting of the reply: 1 working day;
- redaction of those parts of the documents to which one or several exceptions apply: 4 working days;

So I got a bit angry and responded by asking for a list of all relevant documents

Betreff: Re: Proposal for a fair solution - request for access to documents - GESTDEM 2021/4558 - Ares(2021)5032850

Datum: Dienstag, 10. August 2021 um 09:16:52 Mitteleuropäische Sommerzeit

Von: Tillack, Hans-Martin

An: SG RECOVER ATD

Dear SG RECOVER ACCESS TO DOCUMENTS TEAM,

Thank you for your letter. Let me first express my surprise that you worry about time limits although you do seem to have decided unilaterally not to use the time that you had already since you received my request on 14 July. You mention two steps that you have to complete of which I would have expected that you had taken them already immediately after you received my request:

"- identification of the documents falling under your request: 2 working days;
– retrieval and establishment of a complete list of the documents identified: 2 working days;"

Therefore I struggle to understand why it is supposed to be my task to make up for your decision not to process my request immediately, as you would have been obliged by the law.

But in a spirit of cooperation I propose that you send me said "complete list of the documents identified" immediately after you have finally established it. I take it from your mail that this should be done by Monday next week at the latest. Then I can tell you very quickly which documents I wish to obtain and which not. I would also like to note that already article 6 (2) of Regulation 1049/2001 asks the institution concerned to assist the applicant "for example, by providing information on the use of the public registers of documents". As we all know the Commission has never created anything like a comprehensive public register of documents. Therefore I should be grateful to you for providing me at least the list of documents that fall within in the scope of my request, until Monday.

Regulation 1049/2001 had already in 2001 obliged the EU Commission to create a register of all their documents until June 2002. But they never really did that. There is a register but in it many or perhaps even most internal documents are lacking.

Article 11

Registers

1. To make citizens' rights under this Regulation effective, each institution shall provide public access to a register of documents. Access to the register should be provided in electronic form. References to documents shall be recorded in the register without delay.
2. For each document the register shall contain a reference number (including, where applicable, the interinstitutional reference), the subject matter and/or a short description of the content of the document and the date on which it was received or drawn up and recorded in the register. References shall be made in a manner which does not undermine protection of the interests in Article 4.
3. The institutions shall immediately take the measures necessary to establish a register which shall be operational by 3 June 2002.

Side note: Even the EU Parliament holds documents that are so „highly confidential“ that the EP’s own „Transparency Unit“ can not find them in their internal register (from an report of the EU Ombudsman after my complaint about the EP in 2017)

When the Transparency Unit was informed of the request, they searched for the reference number in Parliament’s database. However, the search using that reference number did not show any result. The Ombudsman officials were shown a printout of the results of the search for that reference number.

The Transparency Unit then reasoned that the complainant might have made a mistake with the reference number. Thus, with a view to helping the complainant, they asked him for clarification, that is, if he might have more information, other than the GEDA reference, to help it locate the document. The complainant then stated that the document might need the authorisation of the Secretary General of Parliament in order to be accessed. He also provided the date of the document. The Parliament representatives explained that this additional information helped them identify the file.

By way of background, the Parliament officials explained that documents are treated differently according to their level of sensitivity. This is reflected in GEDA, too. Thus, they confirmed that there are so called “*fiche nominatives*” that are only accessible to certain individuals on a personal basis, and others which are only visible to those services who “need to know”. Thus, a standard search in the database for a given GEDA file will give positive results only if the relevant service has the authorisation to access that file.

Following the additional information that the complainant had provided, the Transparency Unit contacted the Secretary General and managed to identify the document. It emerged that the document was a document which was classified by Parliament as highly confidential and thus as a “*fiche nominative*”.

Back to 2021 and the RRF and my request for a list of the documents on the evaluation of the German RRF evaluation. The Commission did not like my demand for a list. They announced now to apply „standard procedures“...



Brussels
SG.RECOVER.B.3/JS

Subject: Your application for access to documents – GESTDEM 2021/4558

Dear Sir,

We refer to your e-mail of 14 July 2021 (in which you make a request for access to documents, registered on 14 July 2021 under the above-mentioned reference number) and to your most recent email of 10 August 2021 relative to this request.

We are not able to provide a complete list of documents in the scope of your request by Monday 16 August as this would in practice require the consultation of relevant Member States and third parties as described in our previous letter of 9 August 2021. Please note that the number of required working days given for each step of the processing of your access to documents request are an estimate and a strict indicative minimum. In practice, these steps are carried out in parallel rather than consecutively.

The Commission will therefore apply the standard procedures and deadlines as described in our previous exchange of 9 August 2021 and in Regulation 1049/2001.

Thank you in advance for your understanding.

That meant to „unilaterally restrict the scope of your application to those parts that can be dealt with within the extended deadline of 30 working days“

In order to enable us to respect the time-limits of Regulation (EC) No 1049/2001, we would ask you for a swift reply to our invitation to propose a fair solution, **within five working days at the latest:**

- by e-mail to: SG-RECOVER-ATD@ec.europa.eu or jullien.sylvestre@ec.europa.eu

If you have any questions concerning the invitation, you can contact us:

- by e-mail at: SG-RECOVER-ATD@ec.europa.eu or jullien.sylvestre@ec.europa.eu
- by telephone at: (+32) (0) 22 9-63940

In the absence of a reply within five working days, we will **unilaterally restrict the scope of your application to those parts that can be dealt with within the extended deadline of 30 working days, counting from 4 August 2020,** the date of receipt of your reply to our request for clarification regarding your application.

Thank you in advance for your understanding.

Yours faithfully,

They did not quote any legal basis for these „standard procedure“, so I guess that does not exist. Already on 4 August I had decided to complain to the EU Ombudsman about the exceptional hostility with which the Commission had reacted to my request

Betreff: Complaint based on Regulation 1049/2001

Datum: Mittwoch, 4. August 2021 um 18:12:47 Mitteleuropäische Sommerzeit

Von: Tillack, Hans-Martin

An: eo@ombudsman.europa.eu

Dear Madam or Sir,

Based on Regulation 1049/2001 and Regulation 1367/2001 I had sent a request for access to documents to the Commission, regarding all documents held by the Commission on the evaluation of the German recovery and resilience plan as part of the European Recovery and Resilience Facility (RRF), until the decision of the Commission on 22 June 2021 to endorse the German plan.

Instead of processing my request it took the Commission three full weeks to reply to me on 4 August 2021 – today – and to claim in an unspecified manner to restrict my request: *“The description given in your application would need to be further specified to enable us to identify concrete documents, which would correspond to your request.*

We therefore invite you, in accordance with Article 6(2) of Regulation (EC) No 1049/2001 regarding public access to documents, to provide us with more detailed information on the documents you request, such as references, dates or periods during which the documents would have been drawn up, persons or bodies who drafted the documents.... In accordance with the third paragraph of Article 2 of the Detailed rules for the application of Regulation (EC) No 1049/2001, the deadline of 15 working days for handling your application will start running when we receive the requested clarifications.”

On 12 August 2021 I updated the Ombudsman on my latest exchange with the Commission

Let me summarise. Since the adoption of Regulation 1049/2001 in 2001 I have used it fairly often but never have I seen an institution acting in such a manner. I find this especially surprising as Commission President Ursula von der Leyen had promised in July 2020 that "the Commission will ensure full transparency" in the implementation of the recovery facility. Especially as now an NGO like "Transparency International" deplores the "stunning lack of transparency" in the implementation of the facility and as neither the EU Parliament nor most national parliaments have a guaranteed say over the allocation of these funds and people wonder over the role of lobbyists in this context, one would have expected the Commission to make at least some efforts to show a certain degree of openness and offer citizens, civil society and journalists a chance to control the work of the bureaucracies on the EU and the national level.

The Ombudsman Emily O'Reilly formally rejected my complaint – but she also wrote to the Commission President



European Ombudsman

Emily O'Reilly
European Ombudsman

Strasbourg, 23/08/2021

Complaint 1410/2021/MIG

Dear Mr Tillack,

You recently submitted a complaint to my Office about the European Commission's handling of your request for public access to documents concerning Germany's recovery and resilience plan under the Recovery and Resilience Facility (RRF).

I am sorry to have to tell you that my Office is unable to deal with your complaint at this stage.¹ As the Commission is still dealing with your request at the initial stage, it would be premature for my Office to open an inquiry. As you know, the applicable public access rules involve a two-stage procedure and provide for recourse to the Ombudsman after the confirmatory application process has run its course.

This was her letter to Ursula von der Leyen. O'Reilly underlined that the documents on the RRF were of „significant public interest“.



European Ombudsman

Emily O'Reilly
European Ombudsman

Ms Ursula von der Leyen
President
European Commission

SG-MEDIATEUR@ec.europa.eu

Strasbourg, 23/08/2021

Dear President,

On 4 August 2021, Mr Hans-Martin Tillack submitted a
Office concerning how the Commission is handling his request

The complainant is seeking access to material that is of significant public interest, relating to unprecedented measures the EU is taking in the context of a global crisis. While the Commission has already made extensive material about the RRF proactively available², it arguably should have anticipated that it would receive public access requests such as the request

submitted in this case. I have already signalled the need for the Commission, in the context of the measures it has been taking during the COVID-19 crisis, to ensure transparency requirements form part of negotiations, given the important public interests at stake.³ A similar approach should arguably have informed the Commission's negotiations with Member State authorities on their recovery and resilience plans.

To facilitate the handling of future similar requests, the Commission could consider providing more information on the relevant documents it holds, for example, by recording them in its register of documents. This would help identify documents subject to future public access requests and speed up their handling. I note that, in this case, it took the Commission three weeks to contact the complainant to obtain further information.

Please find enclosed copies of the complaint (two documents) and my decision on it.

Yours sincerely,

Emily O'Reilly

It took the Commission President nearly two months to reply on 15 October 2021



EUROPEAN COMMISSION

Ursula von der Leyen
The President

Brussels, 15. 10. 2021
Ares (2021) 5378760

Dear Ombudsman,

I am writing in reply to your letter of 23 August 2021 regarding Case 1410/2021/MIG - How the European Commission dealt with a request for public access to documents concerning Germany's recovery and resilience plan under the Recovery and Resilience Facility (RRF)¹.

I welcome your assessment that the complaint made by the requestor is premature and that the Commission has been dealing with the request in a reasonable manner.

You can rest assured of our commitment to ensuring the transparency of the Recovery and Resilience Facility as we share your assessment that full ownership by EU citizens is a prerequisite to ensure its success.

Yours faithfully,

Ursula von der Leyen

But the intervention of the Ombudsman had helped. The Commission services became a bit more friendly to me. On 15 September I got the list I had asked for.



Subject: GESTDEM 2021/4558 – reply to your request for access to documents- Ares(2021)4561792

Dear Mr Tillack,

We refer to your request for access to documents, registered on 14 July 2021 under the above-mentioned reference number and to the subsequent email exchanges we had on this, in particular your reply of 4 August to the clarification request, our proposal for a fair solution of 10 August 2021 and our follow-up letter of 11 August 2021.

In accordance with Regulation (EC) No 1049/2001 (the 'Regulation'), please find in attachment:

A) **The list of documents falling within the scope of your request.**

Now and in the following weeks I also got several batches of documents, among them minutes of a video conference with German officials from June 2021, where they insisted that „not a single comma can be changed“ in the final German plan

DE RRP - Minutes of videoconference of 3 June 2021


Attendees: DE Ministry of Finance: [REDACTED]
Chancellery); Commission: [REDACTED]
[REDACTED]

Agenda: points raised by the Commission in the e-mail of 2 June

Discussion:

- COM set the context by referring to ongoing Cabinet-level discussions and horizontal consistency checks of the draft CIDs to ensure joint political ownership of the College. The aspect of reform orientation of the plans and addressing CSRs was highlighted as a key point in these discussions. Responding to a question from DE on the timeline of next steps, COM indicated that, according to current planning, College adoption of the first proposals for CID would start from mid-June on an almost daily schedule, with a pair of countries each day. In order to keep to this ambitious schedule, COM deemed it important to agree on the open issues today.
- DE recalled that the RRP had been adopted by the DE government and that there was therefore no room for changes (“not a single comma can be changed in the plan”), certainly not on substance or for adding further milestones. DE also pointed out that

I also got a note about a „virtual beer“ between Brussels and Berlin...

 Ref. Ares(2021)3020874 - 06/05/2021

To: [redacted]@BMF.BUND.DE
Cc: [redacted]@bmf.bund.de; [redacted]@bmf.bund.de;
[redacted]@bmf.bund.de; [redacted]@bmf.bund.de;
[redacted]@bmf.bund.de; (ECFIN); [redacted]
(ECFIN); (ECFIN); (ECFIN);
(ECFIN); (ECFIN); (ECFIN);
(ECFIN); (ECFIN); (SG-
RECOVER); (COMM-BERLIN); (SG-RECOVER);
(SG-RECOVER); (SG-RECOVER-BERLIN);
(SG-RECOVER); (SG-RECOVER);
(SG-RECOVER)

Subject: DE RRP - Excel corrections
Attachments: GRRP tables - unmerged cells.xlsx

Dear [redacted],

Thank you very much for having organised the virtual beer yesterday. It was good to see you, [redacted] and your teams in a laid-back setting. Your human touch and the work on the RRP is much appreciated.

As you know, the assessment is ongoing, and it will be necessary to contact you in the coming days/weeks with some requests.

I used these documents for a story that I published in early November, as part of the first wave of our #RecoveryFiles articles across Europe



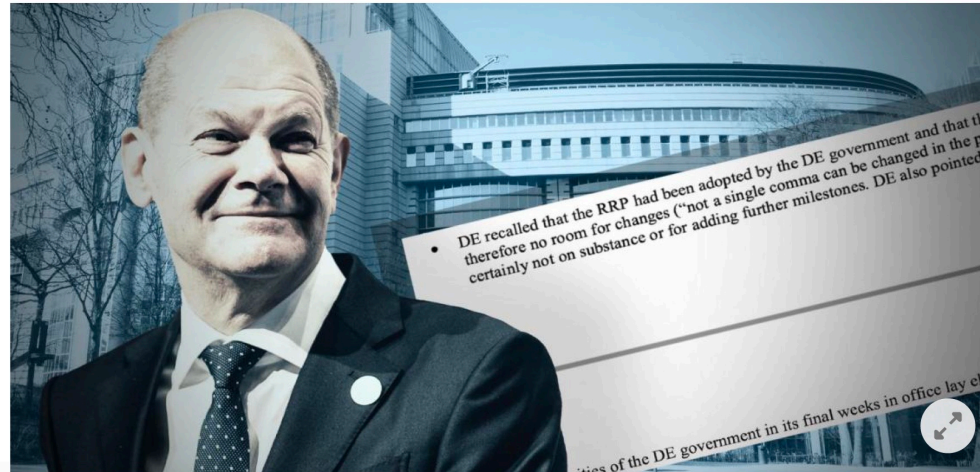
EU-SUBVENTIONEN

Wie in Hinterzimmern über die Milliarden aus Brüssel entschieden wird

Stand: 08:17 Uhr | Lesedauer: 6 Minuten



Von **Hans-Martin Tillack**
Chefreporter Investigation



Then I realised that the Commission had tricked me. They had only sent documents from the time of the official introduction of the German plan since April 2021. But there were already discussions about a German draft since December 2020. So I wrote them again

Betreff: FW: Request / GESTDEM 2021/4558

Datum: Freitag, 15. Oktober 2021 um 17:38:15 Mitteleuropäische Sommerzeit

Von: Tillack, Hans-Martin

An: "Sg-Acc-Doc@ec.europa.eu"

CC: SG RECOVER ATD


Dear Madam or Sir,

on 14 July 2021 I had - based on Regulation 1049/2001 and Regulation 1367/2006 – asked for all documents held by the Commission on the evaluation of the German recovery and resilience plan as part of the European Recovery and Resilience Facility (RRF), until the decision of the Commission on 22 June 2021 to endorse the plan.

Since then you have processed this request as case GESTDEM 2021/4558. In September 2021 you had sent me a list of all the documents that in your view fall within the scope of my request. Only now I realised that a misunderstanding might have occurred. You defined the scope as beginning with the “official submission” of the German plan on 28 April 2021. According to their own words in public however the German government had submitted their first draft to you already in December 2020, followed by an “intensive process of consultation”.

I would respectfully suggest that all documents since the submission of this draft in December 2020 also fall under the scope of my initial request. If you disagree I herewith submit to you an official additional request based on Regulation 1049/2001 and Regulation 1367/2006, for all documents held by the Commission on the evaluation of the draft German recovery and resilience plan as part of the European Recovery and Resilience Facility (RRF), since December 2020 until the “official submission” of the German plan on 28 April 2021.

My new request was rejected completely on 1 December 2021. The Commission cited a German veto...

 Ref. Ares(2021)7416327 - 01/12/2021



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Recovery & Resilience Task Force

Brussels
SG.RECOVER.B.3/JS

Subject: Your application for access to documents – GESTDEM 2021/6192

The German authorities have objected to the disclosure of the documents in table 1 and have motivated their position by explaining that disclosure would undermine the protection of the public interest as regards international relations, by seriously impairing the further decision-making process for the coordination of the operational arrangement between Germany and the Commission as well as subsequent processes in the context of the implementation of the German Recovery and Resilience Plan.

And risks for the financial stability of Germany...


The release of these documents before the implementation phase of the plan has ended could undermine the implementation of the recovery and resilience plan, thus the economic policy of the Member State. First, the disclosure of these documents may lead to interferences and speculations during the negotiations of the operational arrangements. Second, the disclosure of these documents may lead to interferences and speculations during the monitoring of the implementation of the plans, in particular during the assessment of the different payment requests and eventually entail risks to the financial stability of Germany or to the financial interest of the Union, as their disclosure would also generate unwarranted pressures on the European Commission and the other EU institutions that are assessing payment requests. Third, the disclosure of these documents may lead to interferences and speculations at each step of the negotiation process of amendments, given that the documents concerned reveal preliminary views and policy options, which were under consideration and were not necessarily all retained but would remain relevant in case of amendments. Such interferences would eventually entail risks to the financial stability of Germany and the financial interests of the Union.

Before I tell how this went on: Other colleagues of the #RecoveryFiles team from other member states had filed their requests, too. They also encountered mixed success. Matej Zwitter, the colleague from Slovenian media outlet Ostro, got partial access, but...



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Recovery & Resilience Task Force I
Principal Adviser

 Ref. Ares(2021)7757995 - 15/12/2021

Brussels
SG.RECOVER.A.2/VV

Subject: Your application for access to documents – GESTDEM 2021/5688

We would like to inform you that **partial access** can be granted to **43 documents** related to the initial request of 22 September 2021. The documents have been edited by expunging the confidential information. A complete disclosure is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)b of Regulation 1049/2001, because they contain personal data (such as names and functions of Commission staff below senior management positions, or third-party personal data).

Following an examination of the remaining **34 items**, under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we regret to inform you that your **application cannot be granted**, as disclosure is prevented by exceptions to the right of access laid down in the 4th indent of Article 4(1)(a) and in the first subparagraph of Article 4(3) of this Regulation.

These documents include internal documents of the Commission as well correspondence between the Commission and the Slovenian authorities during the preparation and assessment phases of the Slovenian plan on confidential costing information. The disclosure of the internal and/or confidential considerations laid down in the requested documents would seriously undermine the independence and objectivity of the decision-making process.

Attila Biro from RISE in Romania heard an argument that the Commission used frequently in similar ways: Disclosing certain documents would threaten the “climate of mutual trust” with national authorities and “strain the working relations” between Brussels and Bucharest




Brussels
SG.RECOVER.A.2/ML

Subject: Your application for access to documents – GESTDEM 2021/5193

Dear Mr Biro,

Against this background, disclosure of the detailed information on financial and economic policy in Romania under the recovery and resilience plan, at this stage, could undermine the protection of ‘[...] the financial, monetary or economic policy of a Member State’. Moreover, disclosing these details, at the present stage, would strain the working relations between the European Commission and the Romanian national authorities. As a result, the European Commission would be deprived of the possibility to explore all available paths for decision-making. Consequently, access cannot be granted to the requested documents, as their public disclosure would seriously undermine the (ongoing) decision-making process. I have also examined the possibility of granting partial access to documents in Annex 1 in accordance with Article 4(6) of Regulation (EC) No 1049/2001. However, meaningful partial access for these documents is not possible, as they are fully covered by the exception relating to the protection of decision-making process, provided for in Article 4(3) of Regulation 1049/2001.

A bit more openness prevailed in the cases of Denmark and Sweden where also the national authorities were less reluctant to allow access to the documents. But also in the case of Denmark the Commission argued, in a letter to colleague Staffan Dahlöf...

 Ref. Ares(2021)7904080 - 21/12/2021



Brussels
SG.RECOVER.A.1/MB

Subject: Your application for access to documents – GESTDEM 2021/5460

Regarding **Annex 2**, documents listed in this annex mostly relate to meeting minutes between the Commission services and the Danish administration, which are considered as internal documents of the European Commission. They secondly relate to internal documents and information exchanged between the different Commission services. Lastly, they include information related to the costing estimate of the measures included in the Danish plan.

Following an examination of those documents listed in annex 2, under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that your application cannot be granted, as disclosure is prevented by exceptions to the right of access laid down in the 4th indent of Article 4(1)(a) and in Article 4(3) of that Regulation. Disclosure related to detailed information on financial and economic policy in Denmark under the recovery and resilience plan, at this stage, could indeed undermine the protection of '[...] the financial, monetary or economic policy of a Member State'. Moreover, disclosing these details, at the present stage, would strain the working relations between the European Commission and the Danish national authorities. As a result, the European Commission would be deprived of the possibility to explore all available paths for decision-making. Consequently, access cannot be granted to the requested documents, as their public disclosure could undermine the (ongoing) decision-making process.

One thing you can do when public bodies refuse access to documents: You can write about that and publicly shame them. We did this in February.



En dépit de son engagement pour la transparence, Bruxelles refuse de dévoiler des documents sur le plan de relance européen

But in the case of the EU institutions you can also complain, following a procedure laid down in Regulation 1049/2001. If the institution refuses access, partly or completely, you can file a confirmatory application. Here is mine from 6 December 2021

Betreff: Confirmatory Application

Datum: Montag, 6. Dezember 2021 um 15:39:18 Mitteleuropäische Normalzeit

Von: Tillack, Hans-Martin

An: "Sg-Acc-Doc@ec.europa.eu"

Dear Madam or Sir,

on 15 October 2021 I had submitted a request based on Regulation 1049/2001 and Regulation 1367/2006, for all documents held by the Commission on the evaluation of the draft German recovery and resilience plan (RRP) as part of the European Recovery and Resilience Facility (RRF), since December 2020 until the official submission of the German plan on 28 April 2021. This request was registered by you under GESTDEM 2021/6192.

On 1 December 2021 and therefore one and a half months later you have denied me access to all documents that fall under the scope of my application. Herewith I submit a confirmatory application for access to these documents, including to documents that you might have failed to have mentioned in your letter of 1 December.

First of all I was surprised to notice when going through table 1 and table 2 of your letter which listed documents falling under the scope of my request that you name 247 documents that are part of an exchange with the German government but only two documents that were created internally in the Commission and were not part of this exchange. I would like to ask you to verify whether there are really no further internal Commission documents that fall under the scope of my request.

Regarding the 247 documents listed in table 1 you argue that „the German authorities have objected to the disclosure of the documents in table 1 and have motivated their position by explaining that disclosure would undermine the protection of the public interest as regards international relations, by seriously impairing the further decision-making process for the coordination of the operational arrangement between Germany and the Commission as well as subsequent processes in the context of the implementation of the German Recovery and Resilience Plan“.

As you might have noticed - or not - we all had based our requests not only on Regulation 1049/2001 but also on Regulation 1367/2006. It covers access to environmental information based on the Aarhus convention.

Moreover you argue that disclosure of the documents would seriously undermine the Commission's decision-making process. You claim not to have been able to identify an overriding public interest in disclosure. Given the amount of taxpayers' money that the Commission is handling here and given also a possible "overriding public interest" that „shall be deemed to exist where information requested relates to emissions into the environment" according to Regulation 1367/2006 I respectfully ask you to reconsider this position.

I also would like to remind you of the repeated promises by President Ursula von der Leyen that the RRF will be carried out in full transparency. And I would like to remind you of the European Ombudsman's reaction to an early complaint that I had submitted this August:

https://www.ombudsman.europa.eu/en/doc/correspondence/en/145914?utm_source=some_eo&utm_medium=tw_organic&utm_campaign=recoveryfund

The Ombudsman wrote in this matter on 23 August 2021:

„The complainant is seeking access to material that is of significant public interest, relating to unprecedented measures the EU is taking in the context of a global crisis. While the Commission has already made extensive material about the RRF proactively available, it arguably should have anticipated that it would receive public access requests such as the request submitted in this case. (...) A similar approach should arguably have informed the Commission's negotiations with Member State authorities on their recovery and resilience plans.“

Therefore I ask the Secretariat-General to reconsider and to annul the decisions regarding not granting access to the requested documents.

Regulation 1049/2002 says that institutions have to handle confirmatory applications within 15 working days. Only in „exceptional cases“, provided that „detailed reasons are given“ may they add another 15 days.

Article 8

Processing of confirmatory applications

1. A confirmatory application shall be handled promptly. Within 15 working days from registration of such an application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal. In the event of a total or partial refusal, the institution shall inform the applicant of the remedies open to him or her, namely instituting court proceedings against the institution and/or making a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively.
2. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.
3. Failure by the institution to reply within the prescribed time limit shall be considered as a negative reply and entitle the applicant to institute court proceedings against the institution and/or make a complaint to the Ombudsman, under the relevant provisions of the EC Treaty.

These paragraphs are binding law since 2001. Unfortunately they are widely unknown in the EU Commission and even in the EU Parliament. Very often the institutions simply add 15 days without giving any “detailed reasons”.

Betreff: A (2017) 2322 - deadline extension

Datum: Dienstag, 14. März 2017 17:00:46 Mitteleuropäische Normalzeit

Von: AccesDocs

An: Tillack, Hans-Martin

Dear Mr Tillack,

The European Parliament's initial time limit for responding to the above referenced request expires today.

However, due to ongoing internal consultations, the deadline for responding to your request is hereby extended by a further 15 working days in accordance with Article 7(3) of Regulation (EC) n° 1049/2001. The new deadline for responding is 4 April 2017.

Kind regards,



TRANSPARENCY UNIT

European Parliament

Directorate General for the Presidency
Directorate for Inter-Institutional Affairs
and Legislative Coordination

[Public Register webpage](#)

AccesDocs@ep.europa.eu

So did the Commission now in 2021 regarding my confirmatory application on the RRF documents. They gave no detailed reasons but promised “to do their utmost”...



**Your confirmatory application for access to documents under Regulation (EC) No 1049/2001
- GESTDEM 2021/6192 - 1st holding letter - Ares(2022)111919**



o SG ACCES DOCUMENTS <sg-acc-doc@ec.europa.eu>

An: o hmt@hmtillack.de

Freitag, 7. Januar 2022 um 11:55

[Your confirmatory application for access to documents under Regulation \(EC\) No 1049/2001 - GESTDEM 2021/6192 - 1st holding letter - Ares\(2022\)111919](#) (Please use this link only if you are an Ares user – Svp, utilisez ce lien exclusivement si vous êtes un(e) utilisateur d’Ares)


Dear Mr Tillack,

I refer to your email of 6 December 2021, registered on 8 December 2021, by which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents ("Regulation (EC) No 1049/2001"), registered under reference number above.

Your confirmatory application is currently being handled. Unfortunately, we have not yet been able to gather all the elements needed to carry out a full analysis of your request and to take a final decision. Therefore, we are not in a position to reply to your confirmatory request within the prescribed time limit which expires on 7 January 2022. Consequently, we have to extend this period by another 15 working days in accordance with Article 8(2) of Regulation (EC) No 1049/2001. The new deadline expires on 28 January 2022. However, I can assure you that **we are doing our utmost** to provide you with a final reply within the next 15 working days.

I regret this additional delay and sincerely apologise for any inconvenience this may cause.

Other colleagues got similar replies, also Staffan from Denmark

 [Your confirmatory application for access to documents under Regulation \(EC\) No 1049/2001 - GESTDEM 2021/5460 - 2st holding letter - Ares\(2022\)1056890](#) (Please use this link only if you are an Ares user – ~~Svp, utilisez ce lien exclusivement si vous êtes un(e) utilisateur d'Ares~~)

Dear Mr Dahllöf,

I refer to your email of 22 December 2021, registered on 23 December 2021, by which you submit a confirmatory application in accordance with Article 8(1) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents ("Regulation (EC) No 1049/2001"), registered under reference number GESTDEM 2021/5460.

I also refer to our holding reply of 24 January 2022, by which the time limit for replying to your confirmatory application was extended by 15 working days, pursuant to Article 8(2) of Regulation 1049/2001.

I regret to have to inform you that we will not be able to respond within the extended time limit, expiring on 14 February 2022, as we have not yet finalised the necessary consultations. However, I can assure you that we are doing our utmost to conclude these proceedings in order to provide you with a final reply as soon as possible.

I regret this additional delay and sincerely apologise for any inconvenience this may cause.

Yours sincerely,

In my case the Commission spent another 15 working days until telling me that they were „not able to respond within the extended time-limit, as we have not yet finalised internal consultations“. Yes, of course they were doing „their utmost“.

Betreff: Your confirmatory application for access to documents under Regulation (EC) No 1049/2001 - GESTDEM 2021/6192 - 2nd holding letter - Ares(2022)664266

Datum: Freitag, 28. Januar 2022 um 12:25:08 Mitteleuropäische Normalzeit

Von: SG ACCES DOCUMENTS

An: hmt@hmtillack.de

Anlagen: image001.gif

[Your confirmatory application for access to documents under Regulation \(EC\) No 1049/2001 - GESTDEM 2021/6192 - 2nd holding letter - Ares\(2022\)664266](#) (Please use this link only if you are an Ares user – Svp, utilisez ce lien exclusivement si vous êtes un(e) utilisateur d'Ares)

Dear Mr Tillack,

I refer to your email of 6 December 2021, registered on 8 December 2021, by which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents ("Regulation (EC) No 1049/2001"), registered under reference number above.

I also refer to our holding reply of 7 January 2022, by which the time limit for replying to your confirmatory application was extended by 15 working days, pursuant to Article 8(2) of Regulation 1049/2001. This extended time limit expires on 28 January 2022.

I regret to have to inform you that we are not able to respond within the extended time-limit, as we have not yet finalised internal consultations. Please note that these consultations are necessary in order to explore feasible options on how to handle the voluminous scope of your request in light of the sensitivity of the documents requested and taking into account that they originate from a third party, which has to be consulted on the possible disclosure.

However, I can assure you that **we are doing our utmost** to provide you with a final reply as soon as possible.

But by now the Commission was breaking the law which allows them only to extend the time-limit once. So now I was legally entitled to complain to the Ombudsman. One of my arguments was that the Commission had failed to balance the overriding public interest in disclosure against their reasons for refusing access.

I cannot see how the Commission – by refusing my request for a big number of documents - has balanced the overriding public interest in the case of the disbursement of such an important amount of public money against their reasons for refusing access. As 40 per cent of the measures of the German plan for the Fund are related to the fight against the climate crisis I can also not see how the Commission has applied Regulation 1367/2006 properly which states that »an overriding public interest in disclosure shall be deemed to exist where the information requested relates to emissions into the environment«. I had based my request also on Regulation 1367/2006.

With regard to the argument that keeping the requested documents confidential would safeguard the Commission's independence and objectivity, I would respectfully argue that the opposite is true. Given the sums of money involved, the Commission will be under huge political pressure from member states to disburse the money. Transparency will help the Commission to safeguard its objectivity and independence.

I can also not understand how the Commission could come to the conviction that they should be allowed to keep documents under wrap until the implementation of the program has been fully terminated, even after the decision-making is finished. This risks public trust and in my view goes against the treaty which says: "In order to promote good governance and ensure the participation of civil society, the Union institutions, bodies, offices and agencies shall conduct their work as openly as possible" (Article 15.1 TFEU) and "In carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration." (Article 298 TFEU)

The Ombudsman accepted my complaint rather quickly and sent a letter to the Commission on 2 February, reminding them of their legal obligations and asking them to reply by 22 February.

To: SG MEDIATEUR (EC)
Subject: Complaint 187/2022/AMF
Attachments: COMPLAINT_202200187_20220121_094848.pdf

The European Commission's failure to reply to two confirmatory requests for access to documents concerning Germany's recovery and resilience plan under the Recovery and Resilience Facility (RRF) (Your references: GESTDEM 2021/4458 and GESTDEM 2021/6192)

Dear Mr [REDACTED],

The Ombudsman has received a complaint from Mr Hans-Martin Tillack against the European Commission. The Ombudsman has asked me to deal with the case on her behalf.

The complaint is a follow-up to case 1410/2021/MIG^[1] and concerns the Commission's failure to reply within the deadlines established by Regulation 1049/2001 to the complainant's confirmatory applications for access to documents registered under GESTDEM 2021/4458 and GESTDEM 2021/6192. The extended deadline to reply to the confirmatory application under GESTDEM 2021/4458 expired on 18 January 2022 and the extended deadline to reply to the confirmatory application in GESTDEM 2021/6192 expired on 28 January 2022.

We are aware that the Commission is conducting consultations on these requests due to their scope, to the sensitivity of the documents requested and to the fact that the documents originate from a third party.

That said, the time limit for handling confirmatory requests is clearly set out in the public access rules.^[2] In addition, while the time limit can be extended, this is possible only once.^[3] The Commission should thus have replied to the complainant by now.

The Commission replied on 22 February to me, so on the latest day possible. They now offered another „fair solution“, by sending me additional lists of documents and asking me to choose from them a collection of 30 documents, and this „swiftly“...

In order to help you to narrow down your wide-scope requests, please find, attached to this letter for your convenience, a list of the documents concerned in case GESTDEM 2021-4558 in Annex 1 and in case GESTDEM 2021-6192 in Annex 2 sorted under corresponding domains.

We propose the following option for limiting the excessive administrative burden relating to the handling of your wide-scope requests:

- Limit the scope of your requests by referring to a certain domain or document(s) of your interest but with a maximum of 30 documents provided that they do not exceed 500 pages.

Please note that we will reply jointly to both applications with a single Commission decision.

In order to enable us to provide you with a reply as soon as possible, we would ask you for a swift response to our proposal for a fair solution within five working days at the latest, by email to Sg-Acc-Doc@ec.europa.eu.

I replied within two days, focussing on documents on mobility because I knew that the Commission and the German government had – in discussions over the first German draft plan - disagreements over that issue

Re: Your confirmatory request for access to documents - GESTDEM 2021/4558 & 2021/6192



Von Hans-Martin Tillack <hmt@hmtillack.de>

An <Sg-Acc-Doc@ec.europa.eu>

Datum 2022-02-24 16:33

Dear access to documents team,

thank you for your letter. Without accepting your legal argument I herewith would like to limit my request – for now – to all documents concerning GESTDEM 2021-6192 and here to all documents of the "Sustainability axis" (page 1 one of the list), except for documents 21, 26, 53, 69, 70, 100, 101, 157, 158, 208 and 209. Should you still be of the opinion this would be a too big number of documents I would like to offer you to leave out all documents that do not concern climate friendly mobility ("klimafreundliche Mobilität") while I would like to insist on receiving all documents that do touch on climate friendly mobility ("klimafreundliche Mobilität").

Thank you for your help.

This was nearly three months ago. Since then I haven't heard anything from the Commission. Like many of us in the past three months I have done a number of investigations related to the Russian invasion of Ukraine. Otherwise I might have already put more pressure on the Commission. On 2 May the Ombudsman stepped in and asked me about the progress.



RE: Re: your complaint 187/2022/AMF



o [redacted]@ombudsman.europa.eu>

Montag, 2. Mai 2022 um 16:47

An: o 'Hans-Martin Tillack'; Cc: o EORegistry; o [redacted] v

Dear Mr Tillack,

Our inquiry team would like to kindly ask you for an update on the status of your request to the Commission. Has it replied to your reaction to the solution proposal that you sent on 24 February?

With best regards,

European Ombudsman

[redacted]

Directorate of Inquiries

T +32 2 294 40 20

After complaining to the Ombudsman we at #RecoveryFiles are now also considering to take the Commission to court.

What is happening behind these walls? We only know: They are doing their utmost.

Photo:Wikimedia Commons, EmDee CC BY-SA 4.0



Thank you!

