



EUROPEAN COMMISSION

Competition DG

Director General

Brussels, 25/09/08\*D/53684

B.2 JB/BG/mkl (2008) D/332

Permanent representation of Ireland

Att: Mr Frank SMYTH

Ms Karen MACKIN

Rue Froissart 89/93

1040 Brussels

**Subject: Request for access to documents submitted in State aid case N 571/2006 – Renewable Energy Feed In Tariff**  
**Our reference: GESTDEM 4466/2008**

Dear Sir/Madam,

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<sup>1</sup> (“Regulation No 1049/2001”) is in force since 3 December 2001.

Article 4(5) of Regulation No 1049/2001 provides that a Member State may request the institutions not to disclose a document originating from it without its prior agreement.

In that context, it is worth noting that in its judgement of 18 December 2007 *Kingdom of Sweden v Commission*,<sup>2</sup> the Court of Justice gave an interpretation of Article 4(5) of Regulation 1049/2001 which should be taken into consideration by both the Commission and the Member State concerned when dealing with requests for access to documents originating from Member States.

The Commission has received an application for access to documents under Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents. The applicants requested access to the letter from the Irish authorities to the European Commission registered by the European Commission on 28 August 2006 by which the abovementioned State aid scheme was notified, as well as all other submissions by the Irish authorities to the European Commission in relation to the aid scheme in question. The Commission services have registered the attached formal submissions from the Irish authorities in the abovementioned State aid case.

---

<sup>1</sup> [2001] OJ L145, page 43.

<sup>2</sup> Case C-64/05 P *Kingdom of Sweden v Commission*, not yet reported. Judgement available on the European Court of Justice website at : <http://curia.europa.eu>

I draw to your attention to the fact that, according to the above mentioned judgement, Ireland is required to provide the Commission with a statement of reasons justifying the application of one or more of the exceptions laid down in Article 4 (1) to (3) of Regulation 1049/2001.

Indeed, according to paragraphs 88-89 of the above mentioned judgement "*[t]he institution cannot accept a Member State's objection to disclosure of a document originating from that State if the objection gives no reasons at all or if the reasons are not put forward in terms of the exceptions listed in Article 4(1) to (3) of Regulation No 1049/2001. Where, despite an express request by the institution to the Member State to that effect, the State still fails to provide the institution with such reasons, the institution must, if for its part it considers that none of those exceptions applies, give access to the document that has been asked for.*

*Finally, as is apparent in particular from Articles 7 and 8 of the regulation, the institution is itself obliged to give reasons for a decision to refuse a request for access to a document. Such an obligation means that the institution must, in its decision, not merely record the fact that the Member State concerned has objected to disclosure of the document asked for, but also set out the reasons relied on by that Member State to show that one of the exceptions to the right of access in Article 4(1) to (3) of the regulation applies. That information will allow the person who has asked for the document to understand the origin and grounds of the refusal of his request and the competent court to exercise, if need be, its power of review"* (emphasis added).

In the light of the above, should Ireland intend to refuse the disclosure of the requested documents, you are invited not only to indicate the relevant exception(s) of Regulation 1049/2001 which apply in regard of the documents requested, but also to provide the detailed and substantiated statement of reasons as to why Ireland considers that the relevant exception(s) of Regulation 1049/2001 apply to the documents requested.

I also draw your attention to the fact that the Court states that "*... an institution which receives a request for access to a document originating from a Member State and that Member State must, once that request has been notified by the institution to the Member State, commence without delay a genuine dialogue concerning the possible application of the exceptions laid down in Article 4(1) to (3) of Regulation No 1049/2001, while paying attention in particular to the need to enable the institution to adopt a position within the time-limits within which Articles 7 and 8 of the regulation require it to decide on the request for access*" (paragraph 86, emphasis added).

In the light of the above, and in order for the Commission to be in a position to reply to the request for access within the time limit of 15 working days set by Regulation No 1049/2001, we should be grateful if you would indicate, as soon as possible and in any case within **5 working days** from the receipt of this letter, whether Ireland opposes the disclosure of the requested, attached documents.

If it has not received your reply within the stated period, the Commission will be obliged, in accordance with the system of exceptions provided for in Regulation No 1049/2001 and on the basis of the available information, to make a decision whether or not to disclose the requested documents.

In view of the time constraints faced, we should be grateful if you could reply by fax or e-mail to:

European Commission  
Competition Directorate General  
State Aid I  
State Aid Registrar  
B-1049 Brussels  
Fax No: +32-2-296.12.42  
E-mail: [stateaidgreffe@ec.europa.eu](mailto:stateaidgreffe@ec.europa.eu)

Yours faithfully,

Eric van GINDERACHTER  
Head of Unit  
(signed)

Contact:

Johanna BERNSEL, Telephone:(32-2) 298.66.99, [stateaidgreffe@ec.europa.eu](mailto:stateaidgreffe@ec.europa.eu)

Annexes: All formal submissions by the Irish authorities in State aid case N 571/2006:

I: Notification: "Part I - Published terms and conditions"

II: Notification: "Part I - S39"

III: Notification: "Part III - August draft A88[1].3"

IV: Notification: "Part I-II-III"

V: Submission 31 January 2007

VI: Submission 23 April 2007

VII: Submission 3 May 2007

VIII: Submission 4 July 2007

IX: Submission 13 September 2007