



EUROPEAN COMMISSION

Brussels, 14.2.2024
C(2024) 1069 final

Mr Ashley Glover

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) NO 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 – Joined Cases EASE 2023/4018 and
2023/4153**

Dear Mr Glover,

I refer to your emails of 12 August 2023, registered on the same day, in which you submit confirmatory applications in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter ‘Regulation (EC) No 1049/2001’) for your requests with reference number EASE 2023/4018 and EASE 2023/4153.

Please accept our apologies for the delay in replying to your request.

1. SCOPE OF YOUR REQUEST

In your initial application of 10 July 2023, addressed to the Secretariat-General of the European Commission, you requested access to, and I quote:

‘1) Details of records where EU Commission raised environmental concerns raised in relation to Ireland's proposed forestry programme, in particular any records mentioning the following issues:

- a) the percentage of broadleaf trees planted
- b) the impact on farmland birds
- c) the impact of planting on peatlands
- d) the impact on Annex 1 habitats

¹ OJ L 345, 29.12.2001, p. 94.

² OJ L 145, 31.5.2001, p. 43.

- e) the impact on high-value farmland
- 2) Records of EU commission letters to the Irish Dept of Agriculture on June 6, and June 21, relating to its review of Ireland's application for proposed forestry programme for 2023 to 2027.
- 3) Records of Irish Dept of Agriculture (DAFM) letters in response the correspondence received from EU Commission on June 6 and June 21.
- 4) Agenda, minutes, notes or other records relating to in-person bilateral discussions between the EU commission and Irish Minister for the Environment, Climate and Communications, Eamon Ryan and Irish Minister of State, Pippa Hackett that took place on June 20, 2023 in relation to the proposed forestry programme'.

In addition, you clarified that your request is limited to the 2023 records.

Due to the wide scope of your request, you were informed that some parts of your request were assigned to the Directorate-General for Environment (EASE 2023/4018) and the remaining parts to the Directorate-General for Competition (EASE 2023/4153).

In their initial replies of 7 August 2023, the Directorate-General for Competition and the Directorate-General for Environment refused access to the documents in question in relation to the two notified State aid schemes registered under SA.104922 (2023/N) and SA.107220 (2023/N) Ireland Forestry Programme 2023-2027, on the basis of the exceptions of third indent of Article 4(2) (protection of the purpose of inspections, investigations and audits) and Article 4(3) (protection of the decision-making process) of Regulation (EC) No 1049/2001.

In your confirmatory application submitted on 12 August 2023 and registered on the same day, you request a review of this position. You underpin your request with detailed arguments, which I will address more in detail in the corresponding sections below.

The Secretariat-General would like to confirm that both Commission decisions in case SA. 104922 (2023/N) and in case SA.107220 (2023/N) have been adopted and published. Namely, the decision in case SA.107220 (2023/N) was adopted on 2 August 2023 and published 29 August 2023, and the decision in case SA. 104922 (2023/N) was adopted on 24 August 2023 and published on 12 September 2023. Both the decisions in case SA.107220(2023/N)³ and in case SA. 104922(2023/N)⁴ are available and accessible at the Commission's website⁵.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a review of the reply given by the Directorate-General concerned at the initial stage.

³ <https://competition-cases.ec.europa.eu/cases/SA.107220>.

⁴ <https://competition-cases.ec.europa.eu/cases/SA.104922>.

⁵ <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Further to this review, the following categories of documents have been identified as falling under the scope of your application:

1. Details of records where the Commission raised environmental concerns raised in relation to Ireland's proposed Forestry Programme. The Directorate-General for Environment identified the following document as falling under category 1:
 - Ares(2022)8055229 Letter sent from the Directorate-General for Environment to the Irish Department of Agriculture, Food and the Marine dated 22/11/2022.
2. Email exchanges between DG COMP and the EU Permanent representation of Ireland in the context of the notification in cases SA.104922 (2023/N) and SA.107220 (2023/N) concerning the Ireland Forestry Programme 2023-2027. The Directorate-General for Competition identified 16 documents falling under category 2. Namely:
 - 3 letters sent from DG COMP to the EU Permanent Representation of Ireland and the Department of Foreign affairs;
 - 3 letters sent from the Irish authorities to DG COMP;
 - 7 email correspondence from Irish authorities to DG COMP;
 - 3 email correspondence sent from DG COMP to Irish authorities.

Following the review performed at the confirmatory stage, the Secretariat-General is pleased to inform you that document identified in category 1 has already been partially disclosed except for some parts which are redacted based on the exception of Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001 in the case EASE 2022/7067. The document is publicly available at link: <https://ec.europa.eu/transparency/documents-request/search/document-details/1013>.

With respect to the documents identified in category 2), the Secretariat-General regrets to inform you that access must be refused based on the exception of the third indent of Article 4(2) (protection of the purpose of investigations) for the reasons set out below.

2.1 Protection of the purpose of inspections, investigations and audits

The third indent of Article 4(2) of Regulation (EC) No 1049/2001 provides that the *'institutions shall refuse access to a document where disclosure would undermine the protection of [...] the purpose of inspections, investigations and audits unless there is an overriding public interest in disclosure'*.

In its initial reply, the Directorate-General for Competition and the Directorate-General for Environment concluded that the documents requested are covered by a general presumption of non-disclosure, based on the exception of the third indent of Article 4(2) of Regulation (EC) No 1049/2001.

The documents to which you requested access form part of the administrative file of a State aid procedure registered under SA.104922 (2023/N) and SA.107220 (2023/N) Ireland Forestry Programme 2023-2027. The aim of the scheme approved by the Commission and registered under SA.107220 is to support investments in afforestation.

The aim of the scheme under SA.104922 is to support landowners implement economically, ecologically and socially sustainable forest management and use techniques to: (i) promote the growth of forests, (ii) protect biodiversity, soil and water quality and the forest landscape, (iii) adapt forests to climate change, and (iv) increase the ability of forests to store carbon. The Commission assessed the schemes under EU State aid rules, in particular Article 107(3) point (c) of the Treaty on the Functioning of the European Union⁶, which allows Member States to support the development of certain economic activities under certain conditions, and the 2023 Guidelines for State aid in the agricultural and forestry sectors and in rural areas⁷. The Commission found that the scheme is necessary and appropriate to support and strengthen environmental protection, including biodiversity and climate action, and to contribute to achieving the environmental and climate-related objectives of the EU. Furthermore, the Commission found that the scheme is proportionate as it is limited to the minimum necessary and will have a limited impact on competition and trade between Member States and, on this basis, it approved the Irish scheme under EU State aid rules.

Namely, the documents identified in category 2 above contain information which was instrumental for the assessment of the facts, and other information regarding the direction, strategy and procedural steps that the Commission took. As mentioned above, the documents under category 2 were documents communicated by the Irish authorities to the Commission in the context of a procedure for the review of State aid following requests of information according to the Procedural Regulation (EU) to the Irish Department of Agriculture on 6 and 21 June 2023.

Therefore, the Secretariat-General confirms that the documents requested are covered by a general presumption of non-disclosure, as documents forming part of an administrative file resulting from a procedure for review of State Aid.

The Court of Justice has confirmed the existence of the general presumption in the judgment in Case C-139/07 P, *TGI*⁸ where the Court held that there exists with regard to the exception related to the protection of the purpose of investigations, a general presumption that the disclosure of documents in the file would undermine the purpose of State aid investigations. The Court reasoned that disclosure of documents in the file would undermine the purpose of State aid investigations explaining that, under the State aid procedural rules, interested parties other than the Member State concerned, have no right to consult the documents in the administrative file, and should such access be granted under Regulation (EC) No 1049/2001, the nature of the procedure is likely to be modified and thus the system for review of State aid would be called into question⁹.

⁶ Article 107(3) point (c) of the Treaty on the Functioning of the European Union: ‘ [...] 3. The following may be considered to be compatible with the internal market: [...] (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest’.

⁷ OJ C 485, 21.12.2022, p. 1–90.

⁸ See Case C-139/07 P, *Commission v Technische Glaswerke Ilmenau GmbH*, EU:C:2010:376.

⁹ See Case C-139/07 P, *Commission v Technische Glaswerke Ilmenau GmbH*, paragraphs 58-59, EU:C:2010:376. See also Case C-514/07 P, *Sweden and Others v API and Commission*, paragraphs 99

In fact, as recognised by the General Court in its judgement in Case T-214/21, *Múka*¹⁰, in State aid proceedings, the existence of a general presumption of non-disclosure of documents related to the Commission's administrative State aid file applies even if the procedure has already been closed. Such is the situation of the documents identified under category 2.

Please note in this respect that in the *Sea Handling v Commission* judgment, the Court of Justice stated that the general presumption applies even when it comes to a reduced number of documents pertaining to a State aid file¹¹.

It should be noted that the concept of 'investigation' is not restrictive in nature. The Court of Justice ruled in case *France v Schlyter* that '[w]ithout there being any need to identify an exhaustive definition of 'investigation', within the meaning of the third indent of Article 4(2) of Regulation No 1049/2001, a structured and formalised Commission procedure that has the purpose of collecting and analysing information in order to enable the institution to take a position in the context of its functions provided for by the EU and FEU Treaties must be considered to be an investigation'¹².

Regarding State aid proceedings, as stated by the General Court in the *Port de Brest* judgment, the concept of 'investigation' does not only aim to protect the investigation proceedings targeting specific companies or instruments¹³. In contrast, as specified in the *France v Schlyter* ruling as well, the concept of investigation, appearing in the third indent of Article 4(2) of Regulation No 1049/2001, is an autonomous concept of EU law which must be interpreted taking into account, inter alia, its usual meaning as well as the context in which it occurs¹⁴.

The State aid procedure between the European Commission and the Member State involves a bilateral dialogue in which sensitive information is exchanged, including information related to the economic activities of undertakings. Natural and legal persons submitting information to the European Commission have a legitimate right to expect that it will not be disclosed to the public.

and 100 EU:C:2010:376, , as well as Case C-404/10 P, *Commission v Odile Jacob* ('*Odile Jacob*') paragraphs 108 to 126, , EU:C:2012:393, , where the Court of Justice applied *Technische Glaswerke Ilmenau* by analogy to merger proceedings.

¹⁰ Judgment of 5 October 2022, *Ondřej Múka v European Commission*, T-214/21, EU:T:2022:607, paragraph. 55. In this regard, the General Court stated that "according to the case-law, the general presumption of non-disclosure concerning the documents relating to the Commission's administrative file resulting from a State aid control procedure applies regardless of whether the request for access concerns a control procedure which has already been closed or one which is pending" (see, by analogy, judgments of 28 June 2012, *Commission v Agrofert Holding*, C-477/10 P, EU:C:2012:394, paragraph 66, and of 28 March 2017, *Deutsche Telekom v Commission*, T-210/15, EU:T:2017:224, paragraph 45).

¹¹ Judgment of the Court of Justice of 14 July 2016, *Sea Handling v Commission*, C-271/15 P, EU:C:2016:557, paragraph 41.

¹² Judgment of the Court of Justice of 7 September 2017, *France v Schlyter*, C-331/15 P, (hereafter *France v Schlyter*), EU:C:2017:639, paragraph 46.

¹³ Judgment of the General Court of 19 September 2018, *Port de Brest v Commission*, T-39/17, (hereafter *Port de Brest v Commission*), EU:T:2018:560, paragraph 70.

¹⁴ See, for example, *Port de Brest v Commission*, paragraph 71.

This legitimate right arises from the specific provisions concerning the professional secrecy obligation, which provides for documents to be used only for the purposes for which they have been gathered, and the special conditions governing access to the European Commission's files.

Regulation (EU) 2015/1589 of 13 July 2015 on detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (hereinafter the 'Procedural Regulation')¹⁵ sets specific rules in relation to the State aid procedure, especially as regards treatment of information obtained in the context of such proceedings. Regulation (EU) 2015/1589 on one side and Regulation (EC) No 1049/2001 on the other, have different aims, but they are of the same hierarchical order and must be interpreted and applied in a consistent manner. Public access to the administrative State aid file based on Regulation (EC) No 1049/2001 would risk jeopardising the balance which the Union legislature wished to ensure in State aid procedures between the obligation on Member States to communicate possibly sensitive information to the Commission and the guarantee of increased protection in accordance with the State aid procedural regulation.

The fact that Article 32 of the Procedural Regulation promotes transparency of State aid control and provides for the publication of decisions adopted by the Commission concerning State aid in no way means that the exception provided for in the third indent of Article 4(2) of Regulation (EC) No 1049/2001 cannot be applied in the present case¹⁶.

Disclosing the documents could thus jeopardise the capacity of the Commission to gather information and conduct its State aid investigations in the future. Please note also that the European Commission is largely reliant on the cooperation of third parties in order to collect the necessary evidence and issue a final decision. The Commission relies on Member States' contributions, which typically also contain sensitive information relating to companies, and access to such documents would thus also, as already mentioned, undermine the Member States' willingness to cooperate.

This, in turn, would jeopardise the Commission's authority and lead to a situation where the latter would be unable to carry out properly its task of enforcing EU competition law.

Finally, in your confirmatory application, you claim that 'there is no basis indicated in the decision whereby a presumption of confidentiality of state aid files applies to state aid in the environmental field'.

The case-law of the European Union courts does not exclude the right of applicants to demonstrate that a given document, disclosure of which has been requested, is not covered by that presumption¹⁷.

¹⁵ OJ L 248, 24.9.2015, p. 9–29.

¹⁶ See, for example, *Ondřej Múka v European Commission*, para 49.

¹⁷ *Commission v Technische Glaswerke Ilmenau GmbH*, paragraph 103, see also Judgment of the General Court of 2 March 2022, *Huhtamaki Sàrl v European Commission*, T-134/20, EU:T:2022:100, paragraph 59-60.

In this case, however, you do not present any evidence capable of calling into question the finding that the requested documents forming part of a State Aid administrative file in question are covered by the general presumption of non-disclosure of documents. The mere argument that the State aid file at issue involved ‘*state aid in the environmental field*’ does not in itself constitute sufficiently concrete evidence to establish that the general presumption does not apply to the documents requested. Insofar as your arguments are adduced in relation to establishing that there is an overriding public interest, these will be discussed further down below.

The provisions regarding the application of exceptions to the requests for access to environmental information are governed by Article 6 of the Aarhus Regulation.

Article 6(1) of the Aarhus Regulation clearly excludes from its application the information obtained in the context of investigations carried out by the EU institutions, which also includes State aid investigations. In the Case *Daimler AG v Commission*, the General Court has established that the Aarhus Regulation does not have any incidence on the applicability or non-applicability of a general presumption of non-disclosure, nor does it impose a stricter interpretation of the exception related to the protection of the purpose of investigations for documents containing environmental information¹⁸. The Secretariat-General considers that the mentioned case-law established in the framework of an EU pilot investigation, can be applied by analogy to the present case related to a State aid investigation procedure.

Furthermore, by analogy to the situation where investigations concern an infringement procedure during its pre-litigation, the Secretariat-General contends that Article 6(1) of the Aarhus Regulation does not prevent the Commission from having recourse to the general presumption, and that a mere reference to environmental information does not affect the examination that the Commission must carry out pursuant to Regulation (EC) No 1049/2001 when a request for access concerns documents relating to an investigation, such as that in the present case arising from a State aid review procedure¹⁹.

Moreover, in your confirmatory application you claimed that State aid decisions come within the material scope of Article 9(3) of the Aarhus Regulation as determined by the Aarhus Regulation Compliance Committee in its decision on case ACCC/C/2015/128²⁰ which requires that there be administrative or judicial procedures which provide adequate and effective remedies to challenge such decisions. The Secretariat-General notes that the above-mentioned communication recommends that the EU provides ‘[...] members of the public with access to administrative or judicial **procedures** to challenge decisions on State aid measures[...]’ (emphasis added). The Secretariat-General would like to draw your attention to the fact that individuals or organisations may not derive from this Compliance Committee recommendation new rights on access to documents.

¹⁸ Judgment of 4 October 2018, *Daimler AG v Commission*, T-128/14, EU:T:2018:643, paragraphs 99-105.

¹⁹ By analogy to the reasoning of the Court of Justice in Judgment of the Court of Justice of 14 November 2013, *LPN and Finland v Commission*, Joined Cases C-514/11 P and C-605/11 P, EU:C:2013:738, paragraphs 77-85.

²⁰ https://unece.org/sites/default/files/2021-10/ECE_MP.PP_C.1_2021_21_E.pdf.

In fact, following the recommendation, the Commission has launched a consultation and collected its results in its Communication COM(2023)307²¹ through which it has committed to assess the available options. However, the Commission's Communication does not directly provide the citizens new right on access to documents.

Hence, it can be concluded that the requested documents are covered by a general presumption of non-accessibility and that their disclosure is prevented by the exception laid out by the third indent of Article 4(2) (protection of the purpose of investigations) of Regulation (EC) No 1049/2001. The provisions of the Aarhus Regulation cannot call this into question.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exception laid down in the Article 4(2) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure. It is for the applicant to put forward specific circumstances that show that there is an overriding public interest, which justifies the disclosure of the documents concerned²².

Indeed, according to the case-law, the applicant must, on the one hand, demonstrate the existence of a public interest likely to prevail over the reasons justifying the refusal of the documents concerned and, on the other hand, demonstrate precisely in what way disclosure of the documents would contribute to assuring protection of that public interest to the extent that the principle of transparency takes precedence over the protection of the interests which motivated the refusal²³.

In your confirmatory request, you claim that the overriding public interest stems from the significant environmental impact of the State Forestry Programme in Ireland. You state that the previous programme adopted by Ireland failed to protect birds and appeared to be in breach of the Birds Directive²⁴ and the Habitats Directive²⁵. Moreover, you underline that the access would be important to scrutinise whether 'the derogation granted to Ireland from the prohibition on state aid does not harm bird life'.

²¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the findings adopted by the Aarhus Convention Compliance Committee in case ACCC/C/2015/128 as regards state aid: Analysing the implications of the findings and assessing the options available, COM(2023) 307 final of 17 May 2023.

²² See e.g. judgment of the General Court of 5 December 2018 in Case T-312/17, *Campbell v Commission*, EU:T:2018:876, paragraph 58.

²³ Judgment of the General Court of 9 October 2018, *Anikó Pint v European Commission*, T-634/17, EU:T:2018:662, paragraph 48; Judgment of the General Court of 23 January 2017, *Association Justice & Environment, z.s v European Commission*, T-727/15, EU:T:2017:18, paragraph 49; Judgment of the General Court of 5 December 2018, *Falcon Technologies International LLLC v European Commission*, T-875/16, EU:T:2018:877, paragraph 84.

²⁴ OJ L 20, 26.1.2010, p. 7.

²⁵ OJ L 206 22.7.1992, p. 7.

Additionally, you raise concerns regarding the fact that a high degree of forestry in Ireland is concentrated on peat soils and that there is a risk that draining these soils and/or planting forestry will increase carbon emissions²⁶ which would affect climate change.

In your confirmatory application, you claimed that the requested documents contain environmental information pursuant to Article 2(1)(d) of the Aarhus Regulation, therefore the provisions of Regulation (EC) No 1049/2001 should be applied and interpreted in light of the Aarhus Regulation.

Regulation (EC) No 1367/2006²⁷ on the application of the provisions of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters to community institutions and bodies (hereafter ‘the Aarhus Regulation’) sets out the basic terms and conditions for the exercise of the right of public access to environmental information (Article 1).

It expressly provides that Regulation (EC) No 1049/2001 shall apply to any request by an applicant for access to environmental information held by the EU institutions and bodies (Article 3). Therefore, it does not establish a separate system of public access to documents that would derogate from the general system put in place by Regulation (EC) No 1049/2001, but merely provides for specific rules, which supplement Regulation (EC) No 1049/2001 in cases where certain specific types of information are concerned.

As Regulation (EC) No 1049/2001 and the Aarhus Regulation belong to the same hierarchical level in the European Union legislative order, no provision expressly gives one regulation priority over the other. In such cases, as confirmed on many occasions by the case-law of the EU Courts, both pieces of legislation should be applied in a consistent manner²⁸.

In line with case-law of the Union Courts, the Commission has undertaken a balancing test and has reached the conclusion that even if there could be a public interest at stake, nevertheless this interest is not overriding. In fact, the disclosure of the documents requested would undermine the protection of the purpose of the investigation which falls under the exception of Article 4(2), third indent of Regulation (EC) No 1049/2001. The Commission recalls that it is for the applicant to demonstrate the existence of an overriding public interest in disclosure²⁹. As recently held by the General Court, the applicant must ‘demonstrate precisely that, in the particular case, disclosure of the documents concerned would contribute specifically to ensuring the protection of that public interest to such an extent that the principle of transparency takes precedence over

²⁶ “The management of peatlands is a particular concern with respect to potential for loss of carbon. Peat extraction and change of use of drained peatland to grassland or forestry leads to high rates of carbon loss. In general, land management should aim to preserve or enhance areas that have active carbon uptake in soils and biomass, and reduce or eliminate areas that are a source of carbon emissions. Such altered practices also yield benefits for ecosystem services and biodiversity.” <https://www.epa.ie/our-services/monitoring--assessment/climate-change/ghg/lulucf/>.

²⁷ OJ L 264, 25.9.2006, p. 13.

²⁸ In this regard, see judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd*, C-28/08 P, EU:C:2010:378, paragraph 56.

²⁹ See, for example, *Port de Brest*, paragraph 104.

the protection of the interests underpinning the refusal of disclosure'³⁰. Considerations of a purely general nature cannot be such as to establish that the public interest is especially pressing and capable of prevailing over the reasons justifying the refusal to disclose the documents³¹.

In your confirmatory application, you argue that 'Article 9(3) of the Aarhus Convention read in conjunction with and Article 47 of the Charter of Fundamental Rights of the European Union imposes obligations to ensure effective judicial protection of the rights conferred by EU law' and that 'access to the file is an essential procedural safeguard in relation to access to justice'.

The Secretariat-General notes that private interests such as judicial representation and access to justice do not constitute an element which is relevant to the weighing up of interests undertaken when evaluating the existence of an overriding public interest.

In this regard, in the judgment Case C-782/21 P, *Aeris Invest Sàrl v European Central Bank*³², the Court of Justice has explicitly excluded that the right to effective judicial protection can be invoked to require to grant access to certain documents which the applicant might need in order to prepare an action.

Moreover, in the judgment *Reagens v Commission*³³, the General Court has recalled that 'the need to obtain disclosure of the documents requested under the overriding interest in the sound administration of justice [...] does not, as such, constitute an overriding public interest in disclosure capable of prevailing over the protection of confidentiality, for the purposes of Article 4 of Regulation No 1049/2001'. According to the case-law of the Court, the 'interest must be objective and general in nature and must not be indistinguishable from individual or private interests, such as those relating to the pursuit of an action brought against the institutions of the European Union'.

Furthermore, the Secretariat-General would like to emphasise that the purpose of Regulation (EC) No 1049/2001 is to give the general public a right of access to documents of the institutions, and not to lay down rules designed to protect the particular interest which a specific individual may have in gaining access³⁴, and that there is no privileged access to a document under Regulation (EC) No 1049/2001 deriving from the applicants' occupation, as the Court confirmed in Case T-391/03: 'It follows that the applicants' application must be examined in the same way as an application from any other person'³⁵.

³⁰ See case T-214/21, *Ondrej Muka v Commission*, paragraph 68 and judgments cited therein.

³¹ See case T-214/21, *Ondrej Muka v Commission*, paragraph 69 and judgments cited therein.

³² Judgment of the Court of 27 April 2023, *Aeris Invest Sàrl v European Central Bank, European Commission, and Banco Santander, S.A.*, C-782/21 P, paragraph 48.

³³ Judgment of the General Court of 20 March 2014, *Reagens v Commission*, T-181/10, EU:T:2014:139, paragraphs 142-144.

³⁴ Judgment of the General Court of 6 February 2020, *Compañía de Tranvías de la Coruña, SA v European Commission*, T-485/18, EU:T:2020:35, paragraph 80.

³⁵ Judgment of the Court of First Instance of 6 July 2006, *Franchet and Byk v Commission*, T-391/03, EU:T:2006:190, paragraph 82.

The Secretariat-General would like to recall that documents disclosed under Regulation (EC) No 1049/2001 are disclosed to the public at large ('erga omnes') and not only to the applicant who originally requested access.

In addition, the Court of Justice has acknowledged that a general reference to transparency is not sufficient to substantiate an overriding public interest³⁶, including general assertions that the disclosure of the documents is necessary for the protection of human health without providing specific grounds showing to what extent such disclosure would serve that general interest³⁷. That line of reasoning applies equally to your claim where you argue that 'it is therefore very important that access is granted to the requested documents so that they can be scrutinized to ensure that the derogation granted to Ireland from the prohibition of state aid does not harm bird life'.

The arguments you put forward are not considered as sufficient to justify the existence of such interest. In particular, you claim that the previous Irish Forestry programme had failed to protect birds and appeared to be in breach of the Birds Directive and the Habitats Directive. Please note that the Secretariat-General considers the overriding public interest to be better served by ensuring the protection of the investigations, the aim of which is, *inter alia*, to ensure that EU environmental law is respected. Indeed, the General Court has confirmed to that end that it is not for the applicants to establish to what degree EU law is being complied with by the Irish authorities in the light of the factual context set out in their complaint, and that on the contrary, the Commission is best placed to make such assessment³⁸. To that end, during the State aid investigation, the Commission has examined the schemes notified by Ireland concerning the Forestry Programme for 2023-2027 also in light of the Birds Directive and the Habitats Directive and, according to its competences and duties, as confirmed by the Court of Justice in the *Austria v Commission* judgment³⁹, it has verified that the scheme in SA. 107222 was in compliance with EU environmental law⁴⁰.

Moreover, as regards your references to the Aarhus Regulation, Article 6(1) of the Aarhus Regulation stipulates that an overriding public interest in disclosure is deemed to exist *only* with regard to information about emissions into the environment. The requested documents do not contain information as regards emissions into the environment.

In addition, please note the argumentation for refusing access to the documents set out in the section 2 above applies in light of the circumstances of this particular case, concerning a closed State aid investigation.

³⁶ Judgment of the Court of Justice of 16 July 2015, *ClientEarth v Commission*, C-612/13 P, EU:C:2015:486, paragraph 93.

³⁷ Judgment of the Court of Justice of 11 May 2017, *Sweden and Spirlea v Commission*, C-562/14 P, EU:C:2017:356, paragraphs 55-57.

³⁸ Judgment of the General Court of 9 October 2018, *Anikó Pint v European Commission*, T-634/17, EU:T:2018:662, paragraph 53.

³⁹ See case C-594/18 P, *Austria v Commission*, paragraphs 100-102, EU:C:2020:742.

⁴⁰ See case C-594/18 P, *Austria v Commission*, paragraphs 100-102, EU:C:2020:742.

Consequently, the arguments put forward in your confirmatory application do not demonstrate a pressing need for the disclosure of the documents. Any public interest in transparency and accountability in the decision-making is best served at this stage by protecting the bilateral procedure with the Member State. Moreover, the Secretariat-General has not been able to identify any public interest capable of overriding the interest protected by the first and third indents of Article 4(2) of Regulation (EC) No 1049/2001. The Secretariat-General concludes, therefore, that an overriding public interest has not been demonstrated in this particular case.

In consequence, the Secretariat-General considers that in this case there is no overriding public interest that would outweigh the need to safeguard the purpose of investigations and the protection of commercial interests based on the Article 4(2), third indent of Regulation (EC) No 1049/2001.

4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, the Secretariat-General has considered the possibility of granting partial access to the documents requested.

With respect to the document falling under the first category, the Secretariat-General notes that the widest possible partial access has been granted.

With respect to the remaining documents, however, as stated by the Court of Justice, where the documents requested are covered by a general presumption of non-disclosure, such documents do not fall within an obligation of disclosure, in full, or in part⁴¹.

Consequently, the Secretariat-General has come to the conclusion that the requested documents are covered in their entirety by the invoked exception to the right of public access.

5. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



For the Commission

Ilze JUHANSONE
Secretary-General

⁴¹ Judgment in *Odile Jacob*, referenced above, paragraph 133.