

Ms Catherine Day  
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### **Confirmatory Application under Art. 7(2) of Regulation 1049/2001**

Dear Secretary General,

On 03 January 2012, under EC Regulation 1049/2001, I submitted a request for a document to the European Commission – DG ECFIN via the EC's online access to documents request facility. The document I sought was the results of the interservice consultation for the Ombla hydropower plant in Croatia, to be financed by the EBRD. This document was sought in order to better understand whether the EC raised concerns at the EBRD and whether it proposed conditions regarding the environmental aspects of the project. Namely, the EBRD's Board of Directors approved this project on 22 November 2011, *before* an assessment had been carried out regarding the project's impact on a proposed Natura 2000 site. In addition the project is being carried out on the basis of an Environmental Impact Assessment study from 1999, whose content may not fully reflect the requirements of EU legislation in this area. The information we request is key to understanding how the EC enforced its obligation to ensure EU law implementation through its action in the EBRD board.

On 09 February 2012, I received an answer to my request, stating that "*I would like to confirm that there is no formal or informal result of an interservice consultation of the European Commission for the Ombla hydropower plant project to be financed by the EBRD. As for documents laying out the views of different Commission Services about this project, please note that these are for internal use only and cannot be disclosed as this would undermine the Commission's decision-making process.*" The information (documents) I asked for was therefore refused by the European Commission - DG ECFIN.

**In accordance with Art. 7(2) of Regulation 1049/2001, I am hereby submitting a confirmatory application and I am asking the European Commission to reconsider its position to my original request.**

I would like to point out that according to Art. 15 TFEU, in order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph. Each institution, body, office or agency shall ensure that its proceedings are transparent.

I also would like to refer to the principles, established by the ECJ case-law, concerning application of the exceptions for refusing access to documents (Art. 4 of Regulation 1049/2001). All of these exceptions must be applied restrictively and the risk of the public interest being undermined must be reasonably foreseeable and not purely hypothetical (e.g. case T-211/00, *Kuijer v Council* or joint cases C-39/05 and C-52/05, *Sweden, Maurizio Turco v. Council*). In addition, with regard to the exception concerning documents drawn up by an institution for internal use, it should always be considered if there is not an overriding public interest on disclosure of such documents. An option of providing at least partial access to requested documents shall also be always considered (Art. 4(6) of the 1049/2001 Regulation).

Furthermore, I am convinced that at least part of the requested information (documents) shall be considered as “environmental information” in accordance with Art. 2(1)(d) of the 1367/2006 “Aarhus Regulation”, as I assume that the document(s) is/are dealing with the environmental aspects of the Ombla project. According to Art. 6(1) of the “Aarhus Regulation”, the exceptions (grounds for refusal) set out in Article 4 of Regulation No.1049/2001 (EC) shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information requested relates to emissions into the environment. In this respect, I am convinced that namely the sections of the requested documents laying out the views of the Commission Services about the hydropower project that relate to the project’s environmental impacts should be subject to disclosure.

Thank you for your time and I look forward to your response,

Yours sincerely,

Ms Pippa Gallop

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