

Our Reference: FPL/624/03172/1  
Your Reference: 2024/2823

30 September 2024

**By email only**

Secretary General  
European Commission  
[sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

**Re: Warning of court action due to failure to provide an express confirmatory decision**

**Our clients: Public.Resource.Org Inc and Right to Know CLG**

Dear Sir or Madam

We refer to our clients' application for access to documents filed on 29 May 2024. We also refer to the Commission's first decision notified on 10 July 2024 referring to the documents sent to our clients via email of 2 July 2024 in reply to their confirmatory application 2018/5137. We refer to our clients' confirmatory application dated 23 July 2024 which asked the Commission to release the requested documents in the format specified by our clients.

On 15 August 2024 the Commission extended the deadline for a reply to 6 September 2024. The Commission has not met this deadline, nor has it provided any further communication or update in relation to the confirmatory application.

In the confirmatory application our clients complained about the limited functionality of the electronic documents which were released and set out the importance of granting access to documents in an existing format. In light of the case law and common sense, it is very difficult for our clients to understand why the Commission is either unwilling or unable to provide access to the requested documents in a standard format or indeed in an existing format.

As the Commission is aware Article 8(3) of Regulation 1049/2001 provides that 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. Nonetheless, the Court of Justice has held, that even in such a case where the institution fails to reply within the prescribe time limit, it still retains the power to make an express decision even after the deadline has passed<sup>1</sup>.

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<sup>1</sup> Judgment of 19 January 2010, Joined cases T-355/04 and T-446/04, *Co Frutta*, EU:T:2010:15 §§56 to 59

Our clients therefore call on the Commission to provide its express decision within 10 working days of the date of this letter given that the deadline for submitting an application for annulment is approaching.

Our clients hope that the Commission will reconsider its implied negative reply to our clients' confirmatory application, that it will release the documents in the format requested or in an existing format so that court action will not be necessary.

We thank you in advance for your consideration.

Yours faithfully

A handwritten signature in black ink, appearing to read "FP Logue". The signature is written in a cursive, flowing style.

**FP LOGUE LLP**