

Our Reference: FPL/624/03172/3
Your Reference: 2024/2975

30 September 2024

By email only

Secretary General
European Commission
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 4 June 2024. We also refer to the Commission's proposal for a fair solution received on 16 July 2024, one day before the time limit for the Commission's response. On 23 July 2024 our clients sought a confirmatory application which included a detailed response to the fair solution proposal through which the Commission could provide access to the requested documents in full without imposing an undue burden.

On 14 August 2024 the Commission extended the deadline for a reply to the confirmatory application 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. Although it made proposals for a fair solution and imposed a five-day deadline for a response, the Commission has not reciprocated by replying to the detailed response from our clients and their counter proposal.

In the confirmatory application our clients set out the importance of granting access to documents based on the principles of the rule of law and of openness and made a proposal through which the Commission could grant full access to all of the documents according to an agreed timetable.

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 passed¹.

¹ 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 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