



EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

Director-General

Brussels,
CNECT-B2/EM/er

Mr Peter Teffer
Rue Montoyer 18b
1000 Brussels
Belgium

Advanced copy by e-mail:
ask+request-4176-
b35f4f6a@asktheeu.org

REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Dear Mr Teffer,

Subject: Your application for access to documents – Ref GestDem No 2017/2218

I refer to your e-mail to SG ACCES DOCUMENTS dated 10/04/2017 wherein you make a request for access to documents, registered on 10/04/2017 under the above mentioned reference number. We have sent you a holding reply on 05/05/2017 (our reference Ares(2017)2319263) and provided you with some information regarding the first point of your request by mail on 31/05/2017 (our reference Ares(2017)2729089).

1. SCOPE OF THE REQUEST

You requested access to:

- 1) A list of Member States which have notified to the European Commission the implementation of the provisions on penalties, as required by Article 6 of Regulation (EU) 2015/2120;*
- 2) The content of all Member States' notifications of the provisions on penalties, as required by Article 6 of Regulation (EU) 2015/2120;*
- 3) The content of any communication from the European Commission to Member States about the provisions on penalties according to Article 6 of Regulation (EU) 2015/2120.*

As regards your third point, I consider your request to cover documents held up to the date of your initial application, i.e. 10/04/2017.

2. DOCUMENTS COVERED BY REGULATION 1049/2001

A) As regards **point 1)** of your access to document request, we regret to inform you that no documents were found that would correspond to the description given in your application.

Indeed, as specified in Article 2(3) of Regulation (EC) No 1049/2001 (hereinafter "Regulation 1049/2001"), the right of access as defined in that regulation applies only to existing documents in the possession of the institution. Given that no such documents have been identified, the Commission is not in a position to handle your request. In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position. The way to lodge such a confirmatory application is explained at chapter 5 of this letter.

However, we already provided you with the relevant information in our email of 31 May 2017 (our reference Ares(2017)2729089) according to the Code of Good Administrative Behaviour¹. Until 30 May 2017, the Commission has received notifications under Article 6 of Regulation (EU) 2015/2120 from 19 Member States, which are the following: Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, Hungary, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

B) As regards **point 2)** of your request, the following documents have been identified:

1) Belgium:

- *"Medeling voorgeschreven door verordening 2015/2120" sent by Mr Dirk WOUTERS, De Permanent Vertegenwoordiger to Mr Alexander ITALIANER Secretary-General on 27 April 2016 registered under Ares(2016)2107885.*

2) Bulgaria:

- *"Notification of national measures applicable to infringements of Regulation (EU) 2015/2120 of the European parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union" sent by Mr Dimiter Tzantchev, the Ambassador, Permanent Representative of the Republic of Bulgaria to the EU, to Mr Alexander Italianer, Secretary-General on 13 March 2017 registered under Ares(2017)1433806.*

3) Cyprus:

- *"Regulation (EU) 2015/2010 of the European Parliament and of the Council laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on*

¹ Commission Decision (EC, ECSC, Euratom) No 2000/633 of 17 October 2000 amending its Rules of Procedure (OJ L 267 of 20.10.2000, p. 63).

roaming on public mobile communications networks within the Union" sent by Ms Maria Hadji-theodosiou, Deputy Permanent Representative to Mr Roberto Viola, Director General DG CNECT on 6 May 2016 registered under Ares(2016)2206117.

4) Denmark:

- *"Notificering af bekendtgørelse om adgang til det åbne internet og international Roaming" sent by Vibeke Pasternak Jorgensen, Ambassador, Deputy Permanent Representative to Mr Roberto Viola, Director-General DG CNECT on 27 April 2016 registered under Ares(2016)2043344.*

5) Estonia:

- *" Notification of Implementation of Regulation (EU) 2015/2120 of the European Parliament and of the Council" sent by Matti Maasikas, Permanent representative to Mr Alexander Italianer, Secretary-General on 24 May 2016 and*
- *the cover e-mail sent on 30 May 2016.*

Both documents were registered under Ares(2016)2502204.

6) Finland:

- *"Asetukseen (EU) N:o 2015/2120 liittyvä Suomen ilmoitus Euroopan komissiolle" sent on 2 May 2016 and*
- *The cover e-mail sent on 4 May 2016.*

Both documents were registered under Ares(2016)2395753.

7) Hungary:

- *"Notification pursuant to Article 6 of Regulation 2015/2120/EC" sent by Tibor Stelbaczky, Ambassador Extraordinary and Plenipotentiary, Deputy Permanent Representative to Mr Roberto Viola, Director-General of Directorate-General for Communications Networks, Content and Technology on 16 December 2016 registered under Ares(2016)7111949.*

8) Latvia:

- *"Par regulas (ES) Nr.2015/2120 6.panta izpildi" sent by Juris Štālmeistars, Deputy Permanent Representative to Directorate - General for Communications Networks, Content and Technology on 05 July 2016, registered under Ares(2016)3277852.*

9) Lithuania:

- *" NOTIFICATION ABOUT IMPLEMENTATION OF ARTICLE 6 OF REGULATION (EU) 2015/2120 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL" sent by Jurga Kasputienė, Counsellor, Acting deputy Permanent Representative of Lithuania to the EU to the Secretariat-General of the European Commission on 30 June 2016 registered under Ares(2016)3266859.*

10) Luxembourg:

- *"Notification en vertu de l'article 6 du Règlement (UE) 2015/2120 du Parlement européen et du Conseil du 25 novembre 2015 établissant des mesures relatives à l'accès à un internet ouvert et modifiant la directive 2002/22/CE concernant le service universel et les droits des utilisateurs au regard des réseaux et services de communications électroniques et le règlement (UE) no531/2012 concernant*

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l'itinérance sur les réseaux publics de communications mobiles à l'intérieur de l'Union" sent by Mr Christian Braun, Ambassadeur Représentant permanent to Mr Alexander ITALIANER Secretary-General on 06 May 2016, registered under Ares(2016)2205392.

11) Malta:

- *"Implementation of Regulation (EU) 2015/2120 Article 6 laying down measures concerning open internet access." sent by Marlene Bonnici Ambassador, Permanent Representative of Malta to the EU to Mr Roberto Viola Director General of Directorate-General for Communications, Content and Technology on 14 March 2017 registered under Ares(2017)1519190.*

12) Netherlands:

- *"Kennisgeving aan de Commissie ter uitvoering van artikel 6 van Verordening 2015/2120/EG" sent by Stephan Raes, Hoofd Economische Afdeling to Mr Roberto Viola, DG Communications, Networks, Content and Technology on 14 November 2016 registered under Ares(2017)1312763.*

13) Poland:

- *"Letter from Ms Anna Streżyńska, Minister of Digital Affairs, concerning Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015, laying down measures concerning open internet access and amending Directive 2002/22/EC" sent by Sebastian Barkowski, Deputy Permanent Representative of Poland to the EU to Mr Roberto Viola, Director- General for Communications Networks, Content and Technology on 2 June 2016 registered under Ares(2016)2665618 on 8 June 2016 and*
- *"Letter from Ms Anna Streżyńska, Minister of Digital Affairs, concerning Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015, laying down measures concerning open internet access and amending Directive 2002/22/EC and also Regulation (EU)531/2012 of the European Parliament and of the Council on roaming on public mobile communications networks within the Union." sent by Sebastian Barkowski, Deputy Permanent Representative of Poland to the EU to Mr Roberto Viola, Director- General for Communications Networks, Content and Technology on 25 July 2016.*

Both documents were registered under Ares(2016)4078717.

14) Romania:

- *"Notification in accordance with art. 6 and art. 10.3 of the EU Regulation 2015/2120" sent by Cosmin Boiangiu, Deputy Permanent Representative to Mr Anthony Whelan, Director, Directorate General for Communications Networks, Content and Technology on 16 May 2016 and*
- *The cover e-mail "Letter no. 3317/16.05.2016" sent to Mr Anthony Whelan, Director, Directorate General for Communications Networks, Content and Technology.*

Both documents were registered under Ares(2016)2308347.

15) Slovakia:

- *"Notification of the European Commission of the penalties applicable in relation to Article 6 of the Regulation (EU) 2015/2120 of the European Parliament and of the Council laying down measures concerning open internet access and amending*

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Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union" sent by Peter Javorčík, Ambassador to Mr Alexander Italianer, Secretary-General on 15 May 2017 and

- *The cover e-mail "Notifikacia sankcii podľa čl.6 TSM" sent to DG CNECT on 17 May 2017.*

Both documents were registered under Ares(2017)2513416.

16) Slovenia:

- *"Notification of the rules on penalties adopted pursuant Article 6 of the Regulation (EU) no. 2015/2120" sent by Metka Ipavic, Deputy Permanent Representative, to the General Secretariat of the European Commission on 25 April 2016, registered under Ares(2016)2031170.*

17) Spain:

- *"Notificacion articulo 6 Reglamento 2015/2120" sent on 26 April 2016 and*
- *The cover letter sent to Mr Anthony Whelan, Director DG CONNECT on 27 April 2016.*

Both documents were registered under Ares(2016)2020043.

18) Sweden:

- *Letter regarding the notification of penalties under Article 6 of Regulation (EU) 2015/2120 with reference N2016/04098/RS sent by Magnus Corell Departementsrad to the Secretariat General of the European Commission on 09 June 2016 and*
- *the document entitled "Lag SFS 2016:344 om ändring i lagen (2003:389) om elektronisk kommunikation" of 31 March 2016.*

Both documents were registered under Ares(2017)2613665.

19) United Kingdom:

- *Letter entitled "THE OPEN INTERNET ACCESS (EU REGULATION) REGULATIONS 2016" sent to Mr Alexander Italianer, Secretary General, European Commission on 30 May 2016.*
- *E-mail entitled "Open Internet Access EC Reg 2015/2120 - UK implementation" sent by Lisa Rhodes, PA to Tim Figures and support to the Transport and Energy Teams, Competitiveness and Markets section, UK Representation to the EU to Mr Alexander Italianer, Secretary General on 30 May 2016.*
- *Statutory Instruments - 2016 No. 607 - Electronic Communications – The Open Internet Access (EU Regulation) Regulations 2016*
- *The Open Internet Access (EU Regulation) Regulations 2016, Impact Assessment (IA) of 8 April 2016*
- *THE OPEN INTERNET ACCESS (EU REGULATION) REGULATIONS 2016 – TRANSPOSITION NOTE.*

All five documents were registered under Ares(2016)2499068.

C) As regards point 3) of your request, the following documents have been identified:

- 1) *E-mail of February 14, 2017 3:33 PM to Estonia registered under Ares(2017)3024155;*
- 2) *E-mail of February 14, 2017 11:54 AM to Estonia registered under Ares(2017)3024155;*
- 3) *E-mail of March 10, 2017 10:55 AM to Luxembourg registered under Ares(2017)3024307;*
- 4) *E-mail of March 9, 2017 11:30 to Luxembourg registered under Ares(2017)3024307;*
- 5) *E-mail of March 07, 2017 14:34 to Malta registered under Ares(2017)3024400;*
- 6) *E-mail of March 02, 2017 4:12 PM to the Netherlands registered under Ares(2017)3024682;*
- 7) *E-mail of March 02, 2017 14:50 to the Netherlands registered under Ares(2017)3024682;*
- 8) *E-mail of February 27, 2017 11:32 AM to Poland registered under Ares(2017)3024863;*
- 9) *E-mail of April 04, 2017 11:39 to Slovenia registered under Ares(2017)3025917;*
- 10) *E-mail of April 03, 2017 14:57 to Slovenia registered under Ares(2017)3025917;*
- 11) *E-mail of March 08, 2017 3:11 PM to Sweden registered under Ares(2017)3026059;*
- 12) *E-mail of March 07, 2017 11:13 to Sweden registered under Ares(2017)3026059;*
- 13) *E-mail of March 06, 2017 10:49 to Sweden registered under Ares(2017)3026059;*
- 14) *E-mail of March 07, 2017 6:54 PM registered under Ares(2017)3030255 ;*
- 15) *E-mail of March 07, 2017 10:08 registered under Ares(2017)3030255;*
- 16) *E-mail of March 08, 2017 4:51 PM registered under Ares(2017)3030776;*
- 17) *E-mail of February 22, 2017 16:28 registered under Ares(2017)3030928;*
- 18) *E-mail of February 23, 2017 09:31 registered under Ares(2017)3030928;*
- 19) *Document registered under Ares(2016)5879785.*

3. DOCUMENTS OUT OF SCOPE OF REGULATION 1049/2001

Some parts of the documents (this refers to emails that are part of an email thread) under point C) of chapter 2 have been blanked out as not being relevant for your request (i.e. "out of scope"), for the following reasons:

- a) It was not a communication from the Commission to the Member State or
- b) It did not concern the provisions on penalties according to Article 6 of Regulation (EU) 2015/2120).

You will find in the Annex 1 the full list of documents (emails) not falling within the scope of your request according to Regulation 1049/2001.

4. ASSESSMENT OF THE DOCUMENTS COVERED BY REGULATION 1049/2001

Having examined the documents requested under the provisions of Regulation 1049/2001 regarding public access to documents, I have arrived at the following conclusions:

a) Partial access

Partial access may be granted to all documents under point B) and documents 1) to 13) under point C) of chapter 2.

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Some parts of these documents have been blanked out as they contain personal data, such as:

- The hand-written signatures : this concerns documents listed under point B;
- The names of natural persons other than the names of the main representative of an external entity (Head of State, Minister, State Secretary, Director-General, Ambassador, Permanent Representative): this concerns documents listed under point B and under point C of chapter 2;
- The names of Commission staff not occupying senior management positions (the Secretary-General, Directors-General and Directors): this concerns some documents under point B and all documents listed under point C of chapter 2.

Pursuant to Article 4(1) (b) of Regulation 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data. The applicable legislation in this field is Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (hereinafter "Regulation 45/2001").²

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable.³

According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

I consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and/or that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested expunged from this personal data (see annexes).

In case you would disagree with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make a confirmatory application requesting the Commission to review this position. The way to lodge such a confirmatory application is explained explained at chapter 5 of this letter.

b) Access denied

Conversely, after having examined documents 14) to 19) listed point under C) of chapter 2, I regret to inform you that access cannot be granted due to ongoing investigations.

² Official Journal L 8 of 12.1.2001, p.1.

³ Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

Disclosure of the documents requested would undermine the purpose of the ongoing investigation; indeed, disclosure of the document at this point in time would affect the climate of mutual trust between the authorities of the Member State and the Commission, which is required to enable them to resolve the case without having to refer it to the Court of Justice. Therefore the exception laid down in the third indent of Article 4(2) of Regulation 1049/2001 applies to these documents.

I have considered whether partial access could be granted to these documents (i.e. documents 14) to 19) under C of chapter 2), however they are entirely covered by the above mentioned exception.

The exception laid down in Article 4(2) of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the documents. I have examined whether there could be an overriding public interest in disclosure, but I have not been able to identify such an interest.

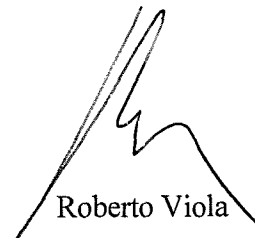
5. CONFIRMATORY APPLICATION

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/282
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Roberto Viola