



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE and CONSUMERS

Director-General

Brussels,
DG JUST/C2/Ares(2017)s5698320

Ms. Silke Wettach
rue Forestiere 24/4
1050 Brussels
Belgium

**Registered mail with acknowledgement
of receipt**

Advance copy by e-mail: ask+request-4619-a2fd5f5d@asktheeu.org

Dear Ms Wettach

Subject: Your application for access to documents – Ref GestDem No 2017/5182

We refer to your e-mail of 7 September 2017, in which you make a request for access to documents, registered on 08 September 2017 under the above mentioned reference number.

As concerns Ref GestDem No 2017/5181 covering the same scope, a separate response will be provided by the Directorate-General for Communications Networks, Content and Technology, who are responsible for this request.

You request access to:

the exchange of emails (including attachments) between Commission officials and DG Connect and/or DG Justice on those DGs' preliminary assessment of the German Netzdurchsetzungsgesetz (NetzDG)

Your application concerns the following documents:

1. E-mail from a Commission official in DG JUSTICE to an official in DG CONNECT of 24 April 2017 at 11.45, entitled "Notification 2017/127/D Act improving law enforcement on social networks".
2. E-mail from a Commission official in DG CONNECT to an official in DG GROW of 25 April at 9.15, entitled "Notifications 2017/127/D Act improving law enforcement on social networks - questions of understanding".
3. E-mail from a Commission official in DG JUSTICE to several officials in DG CONNECT and DG JUSTICE of 23 May 2017 at 11.50, DE entitled "draft law assessment JUST/CNECT".

4. E-mail from a Commission official in DG CONNECT to an official in DG JUSTICE of 27 May 2017 at 10.20, entitled "Meeting at 17.30".
5. E-mail from a Commission official in DG JUSTICE to an official in DG JUSTICE, copying several officials in DG CONNECT of 8 June 2017 at 14.56, entitled "NetzDG-assessment-meeting CNECT-JUST-DE_clean (3)(2).docx".
6. E-mail from a Commission official in DG JUSTICE to an official in DG CONNECT of 9 June at 18.00, entitled "Flash report technical meeting between DG JUST and CNECT and representatives from the German ministry of Justice on the draft law to improve law enforcement in social networks; 9 June".
7. E-mail from a Commission official in DG CONNECT to Marie FRENAY, Member of Cabinet ANSIP of 30 June 2017 at 13:03, entitled "Main modifications on the NetzDG".

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that your application cannot be granted, as disclosure is prevented by the exception to the right of access laid down in Article 4 of this Regulation.

The documents which you seek to obtain access to, contains informal exchanges between officials in DG JUSTICE and DG CONNECT on the compliance of a draft Member State legislative proposal with EU law as well a records of technical exchanges with that Member State's officials. The documents relate to a bilateral dialogue which includes an assessment of a law under investigation with the aim to establish facts and to monitor the situation and national implementation closely, beyond the purpose of the notification procedure provided for in Directive (EU) 2015/1535.

Disclosure of these documents which, as indicated in the foregoing, aims at establishing facts and to monitor the situation and national implementation closely, would affect the purpose of an 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 in order to protect the investigation process and the trust of the investigated entities. This to encourage the full cooperation of the latter and to safeguard the purpose and effectiveness of similar future exercises, as well as to make sure not to endanger the completion and purpose of the investigation and the decision on its follow up. Furthermore disclosing such internal assessments would be liable to lead the Commission service to display reticence and caution in the future in the drafting of such assessments in order not to affect the Commission's decision-making capacity in areas in which it is involved in its administrative capacity.

In accordance with the jurisprudence of Court of Justice of the European Union¹, this investigation, remain covered by the exception based on the protection exception based on the protection of inspections, investigations and audits as long as this investigations or inspections continue, even if the notification procedure provided for in Directive (EU) 2015/1535 is completed.

¹ Case T-20/99.Denkavit Nederland BV v Commission of the European Communities, Judgment of the Court of First Instance (First Chamber) of 13 September 2000.

Therefore the exception laid down in Article 4(2) third indent of Regulation (EC) No 1049/2001 applies to these documents.

In its Communication on Tackling illegal content online², the Commission has announced that it will monitor progress and assess whether additional measures are needed, including possible legislative measures to complement the existing regulatory framework. This work will be completed by May 2018. The requested documents could seriously undermine the institution's decision-making process. Therefore the exception laid down in Article 4(3) of Regulation 1049/2001 applies to these documents.

We have considered whether partial access could be granted to the documents requested. However when doing so, we have concluded that the remaining parts after expunging the confidential information would be meaningless in relation to the scope of your request which relates to the two DGs' preliminary assessment of the German Netzdurchsetzungsgesetz (NetzDG) and which is covered by Article 4(2) third indent of Regulation (EC) No 1049/2001.

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,

Tiina ASTOLA

² COM(2017)555.