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GROW/B2/DG/mr (2019) 7705456

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**Subject: Your application for access to documents – Ref. GestDem 2019/5565**

Dear Mr Schindler,

I refer to your request for access to documents of 17 September 2019, registered on the same day, in line with Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>1</sup> ("Regulation 1049/2001").

In your request of 17 September 2019, addressed to the Directorate-General for Communications Networks, Content and Technology (DG CNECT), you request access to the following documents:

**“\* all information (including but not limited to letters, emails, email drafts, documents, notes, memoranda, studies, remarks, copies, data, files, facsimiles, drafts and records) about the notification under Directive 98/34/EC related to the German Presseverlegerleistungsschutzrecht (Achstes Gesetz zur Änderung des Urheberrechtsgesetzes dated May 7, 2013 (BGBl 2013 I Nr. 23 ,pg 1161)**

**\* any information (see above) related to the interpretation of Directive 98/34/EC with regards to the notification requirements in the field of copyright.**

**\* any information within the Commission and their staff regarding the ancillary copyright law ("Leistungsschutzrecht für Presseverleger")**

**\* any information concerning the recently closed ECJ case on the notification of the German Leistungsschutzrecht.”**

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<sup>1</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

As you were informed, your request was split between the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) and DG CNECT. Please note that DG GROW will handle the parts of your request that are marked above in bold (the last part is handled by both DG GROW and DG CNECT) and that this reply covers only documents in possession of DG GROW. We consider your request to cover documents held up to the date of your application.

You specified that you had filed similar requests in 2015 and in 2017, which were registered under GestDem numbers 2015/3352 and 2017/0859, and that you now requested access to the documents which had not, or had only partially, been released following those requests.

This response takes into account all of the associated documents of the two previous requests mentioned above. Please note that the documents that were partially disclosed pursuant to Article 4(1)(b) of Regulation 1049/2001 are not added to the below list of identified documents as the protection of privacy and integrity of the individual is still relevant. In addition, a new document has been identified as falling under the scope of your request regarding the recently closed ECJ case on the notification of the German Leistungsschutzrecht.

As a result, the documents relevant for your request are listed below, with a new numbering (1-7):

- (1) E-mail exchange between Commission services and Spanish authorities of 3 October 2014 on “EC ancillary copyright” (Document 19, Annex I, GestDem 2015/3352);**
- (2) Comments of the Commission on notification 2013/244/E of 8 August 2013 made under Article 8(2) of Directive 98/34/EC addressed to Spanish authorities (Document 21, Annex I, GestDem 2015/3352);**
- (3) Response of Spanish authorities of 15 July 2014 to Comments of the Commission on notification 2013/244/E made under Article 8(2) of Directive 98/34/EC (Document 22, Annex I, GestDem 2015/3352);**
- (4) E-mail exchange between Commission services of 7 October 2014 on “P-6993/2014 comments” concerning ES ancillary copyright (Document 40, Annex I, GestDem 2015/3352);**
- (5) Attachment of E-mail exchange between Commission services of 7 October 2014 on “P-6993/2014 comments” concerning ES ancillary copyright (Document 41, Annex I, GestDem 2015/3352);**
- (6) Note of Commission services of 19 October 2015 on “Rules on ancillary copyright. Germany and Spain – note to LS” (Document 3, Annex II, GestDem 2017/0859);**
- (7) Draft Agenda of meeting on 14 October 2019 “Subjects selected for the 132nd Meeting of the Technical Regulations Committee” (NEW).**

Following a review and assessment of your request, including the previous requests and all of the associated documents, and taking into account relevant developments, I am pleased to inform you that:

- Full access is granted to documents 2, 3 and 7;
- Wide partial access, subject only to redaction of personal data, is granted to documents 1 and 6;
- With regard to documents 4 and 5, partial access as per Commission Decision C(2017) 6448 concerning your confirmatory application in GestDem 2017/0859 is confirmed. The redacted parts were based on the exceptions of Article 4.2 (court proceedings) and Article 4.3 (decision-making process) of Regulation 1049/2001. Despite the Article 4.2 exception not applying anymore due to the closure of the concerned Court case, Article 4.3 still applies.

### ***Protection of privacy and the integrity of the individual***

Pursuant to Article 4(1)(b) of Regulation (EC) No 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 European Union legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ("Regulation 2018/1725").

The documents to which you request access contain personal data, in particular personal data of non-senior management staff of the European Commission. Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data "*means any information relating to an identified or identifiable natural person [...]*". The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.<sup>2</sup>

In its judgment in Case C-28/08 P (Bavarian Lager), the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable.

Pursuant to Article 9(1)(b) of Regulation 2018/1725, personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if *[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests.*

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<sup>2</sup> Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

### ***Protection of the decision-making process***

Documents 4 and 5 are exchanges between former DG ENTR, former DG MARKT<sup>3</sup> and DG COMP staff in the framework of the drafting of a reply to a written parliamentary question P-6993/2014.<sup>4</sup>

You already received partial access to the documents as part of Commission Decision C(2017) 6448. I would like to recall that the redacted parts of the documents contain opinions for internal use, exchanged between Commission services' staff as part of preliminary consultations. Disclosure of these parts would undermine the protection of the decision making process within the Commission pursuant to Article 4(3) of Regulation 1049/2001.

The exception laid down in Article 4(3) of Regulation (EC) No 1049/2001 applies unless there is an overriding public interest in disclosure of the documents.

I consider that in this case there is no overriding public interest that would outweigh the interest in safeguarding the protection of the decision-making process by Article 4(3) of Regulation 1049/2001.

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<sup>3</sup> Now Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW).

<sup>4</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=P-2014-006993&language=EN>.

In accordance with Article 7(2) of Regulation (EC) No 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  
Secretariat-General  
Transparency, Document Management & Access to Documents (SG.C.1)  
BERL 7/076  
B-1049 Bruxelles  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



TIMO PESONEN

Enclosures:

- Document 1: E-mail exchange between Commission services and Spanish authorities of 3 October 2014 on “EC ancillary copyright”;
- Document 2: Comments of the Commission on notification 2013/244/E of 8 August 2013 made under Article 8(2) of Directive 98/34/EC addressed to Spanish authorities;
- Document 3: Response of Spanish authorities of 15 July 2014 to Comments of the Commission on notification 2013/244/E made under Article 8(2) of Directive 98/34/EC;
- Document 6: Note of Commission services of 19 October 2015 on “Rules on ancillary copyright. Germany and Spain – note to LS”;
- Document 7: Draft Agenda of meeting on 14 October 2019 “Subjects selected for the 132nd Meeting of the Technical Regulations Committee”.