



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate C - Transparency, Efficiency & Resources
SG.C.1-Transparency, Document Management & Access to Documents

Brussels,
SG.C.1/

Mr Mathias Schindler

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**Subject: Your application for access to documents – GESTDEM 2021/5197 –
proposal for a fair solution**

Dear Mr Schindler,

We refer to your letter of 21 September 2021, in which you submitted a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents ¹ (hereafter ‘Regulation (EC) No 1049/2001’).

Please accept our apologies once again for the delays in the handling of your application and for any inconvenience this may cause you.

In your initial application of 24 August 2021 registered on 25 August 2021, you requested access to ‘all information held by the European Commission and its DGs and Agencies concerning the transposition of this Directive² into national law and the infringement cases concerning this matter. This includes all internal and external conversation in email, writing, notes, memos, briefings as well as any inter- or intra-service-consultation.’

The infringement cases mentioned in your application were the following: INFR(2021)0362 (Slovakia), INFR(2021)0354 (Slovenia), INFR(2021)0337 (Romania), INFR(2021)0321 (Poland), INFR(2021)0296 (Latvia), INFR(2021)0289 (Luxemburg), INFR(2021)0279

¹ OJ L 145, 31.5.2001, p. 43.

² Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC.

(Lithuania), INFR(2021)0270 (Italy), INFR(2021)0262 (Ireland), INFR(2021)0251 (Croatia), INFR(2021)0241 (France), INFR(2021)0224 (Spain), INFR(2021)0212 (Greece), INFR(2021)0203 (Estonia), INFR(2021)0196 (Denmark), INFR(2021)0185 (Czechia), INFR(2021)0173 (Cyprus), INFR(2021)0160 (Bulgaria), INFR(2021)0149 (Belgium) INFR(2021)0137 (Austria).

In its initial reply of 17 September 2021, the Directorate-General for Communications Networks, Content and Technology identified the following categories of documents as falling under the scope of your request and provided you with two lists:

- A. Documents relating to Interservice consultations(4 documents)
- B. Letters of formal notice sent by the Commission to Member States and their Annexes (40 documents)
- C. Correspondence from the Member States (24 documents)
- D. National transposition measures (12 documents).

The Directorate-General for Communications Networks, Content and Technology informed you that all documents under category D are publicly available and referred you to the links.

It refused access to the remaining categories of documents based on the exception to the right of access laid down in Article 4(2) third indent of Regulation 1049/2001(protection of the purpose of inspections, investigations and audits)

In your confirmatory application you requested a review of this position. You have contested notably the way Directorate-General for Communications Networks, Content and Technology has interpreted the scope of your request and the use of the exception to refuse access to these documents.

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General has to conduct a fresh review of the reply given at the initial stage.

We would like to inform you that in the meantime, six infringement cases were closed³.

Following internal discussions within the Commission, the Secretariat-General has decided to send you a clarification request in order to have clarity on the scope of your application. In this letter, the Secretariat-General informed you that the Commission has opened infringement proceedings against 23 Member States for the lack of transposition of Directive 2019/790, which concern only the non-notification of complete transposition measures.

We have further informed you that the scope of your initial request was understood to cover documents related to the infringement procedures for non-communication of complete transposition measures which fall under the categories under points 1-4. Furthermore, our understanding was that documents relating to information and correspondence with Member States that communicated full transposition (there was as a consequence no infringement procedure launched against them for lack of transposition), or

³ The cases against ES, HR, IT, IE, EE and AT.

to correspondence with Member State and/or other stakeholders concerning transposition aspects that are not related to the infringement cases above, were **not covered** by your request. We asked you to confirm whether this understanding was correct.

Furthermore, we have informed you that we understand that you are interested in the 20 cases indicated in your request and not in all 23 cases launched by the Commission (i.e. including in the three remaining infringement cases for non-notification of transposition measures opened) and we asked you to confirm whether our understanding was correct.

By your reply to our clarification request, you have specified that you are interested in receiving access to all information, including documents covered by the cases described. Furthermore, you have clarified that you are interested in obtaining information relating to all 23 cases.

Following a renewed search for the documents, it has become apparent that your application concerns a very high number of documents, amounting to approximately 425 documents following a preliminary search in the Commission's official document management systems and identified up until the date of your confirmatory application.

The work needed to conduct this review entails multiple steps:

- Contacts/exchanges consultations within the institution;
- Retrieval of the documents falling under the scope of your requests;
- Preliminary assessment of the content of the documents in light of the exceptions of Article 4 of Regulation EC (No) 1049/2001;
- Assessment of the further procedural steps to undertake, for example whether third party consultations should be made;
- (possibly) third-party consultations under Article 4(4) of Regulation 1049/2001 and (possibly) a further dialogue with the third party originators of documents falling within the scope of your request;
- Final assessment of the documents in light of the comments received, including of the possibility of granting (partial) access;
- Redactions of the relevant parts falling under exceptions of Regulation EC (No) 1049/2001);
- Preparation of the draft reply;
- Consultation of the Commission's Legal Service;
- Finalisation of the reply at administrative level and formal approvals of the draft decision;
- Final check of the documents to be (partially) released (if applicable) (scanning of the redacted versions, administrative treatment) and dispatch of the reply.

The completion of these steps with regard to a very large number of documents cannot be expected to be completed within reasonable time.

As stated by the EU Courts, the European Commission needs to respect the principle of proportionality and ensure that the interest of the applicant for access is balanced against the workload resulting from the processing of the application for access in order to safeguard the interests of good administration⁴.

Article 6(3) of Regulation (EC) No 1049/2001 provides that in the event of an application relating to a very long document or to very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution.

Based on the above-mentioned provision and taken into account the amount of information which is already published on the Commission website⁵, we would kindly ask you to specify the objective of your wide-scoped request and your specific interest in the documents requested⁶, and whether you could narrow down the scope of your request, so as to reduce it to a more manageable number.

In order to help you to narrow down your wide-scoped request, please see below a table with a list of categories of documents.

Subject – matter	Documents Subsets
Infringements for non-communication	Commission documents Replies from Member States National transposition measures Explanatory documents
Notifications of national transposition measures from Member States against which there was no infringement opened for lack of transposition of DSM	National transposition measures Explanatory documents

⁴ Judgment of the Court of First Instance of 13 April 2005, *Verein für Konsumenteninformation v Commission*, T-2/03, EU:T:2005:125, paragraph 102.

⁵ For instance regarding the MNE: <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32019L0790>; regarding Article 17 of the DSM: [Stakeholder dialogue on copyright | Shaping Europe's digital future \(europa.eu\)](#)
[Factual Summary Report Art 17 consultation rxeMNaKHNCATYy8hGc30gPHTWI_76685.pdf \(europa.eu\)](#)

⁶ Ibid, paragraph 28; Judgment of the Court of First Instance, (now 'General Court') of 22 May 2012, *EnBW Energie Baden-Württemberg v Commission*, T-344/08, EU:T:2012:242, paragraph 105.

Exchanges with Member States	Minutes, agendas of Contact Committee Replies from MS to the questionnaire on the remuneration chapter Replies from MS to the questionnaire out of commerce works Replies from MS to the Extended collective licencing questionnaire Bilateral exchanges with MS authorities
Exchanges with stakeholders on DSM related issues	BTOs (Back to the office)/meeting reports Documents linked to Guidance on Article 17 Other messages/exchanges

In order for you to have a more detailed overview, please also find attached in annex a list of documents indicative of our understanding of the very wide scope of this request, identified up until the date of your confirmatory application. This list reflects our best efforts to identify the relevant documents, following an initial search by key words in the Commission's official document management systems.

In order to limit the excessive administrative burden relating to the handling of your wide-scope request, we kindly invite you **to indicate a category/subsets of documents that you are interested in and to specify your interest in obtaining the documents.**

If you accept our proposal, please note that the multiple steps of the review described above will apply.

Finally, we are pleased to inform you that some of the documents which fall within the scope of your request are public. You may find the links to those documents in the attached annex⁷.

In order to enable us to provide you with a reply as soon as possible, we would ask you for a swift response to our proposal for a fair solution within five working days at the latest, by email to Sg-Acc-Doc@ec.europa.eu.

⁷ In addition, public documents also exist with respect to the guidance on Article 17, which are available here: Stakeholder dialogue on copyright | Shaping Europe's digital future (europa.eu). Part of the documents listed under heading of MS replied to ECL is available at <https://digital-strategy.ec.europa.eu/en/library/reports-collective-management-and-extended-licensing#Documents>.

Please do not hesitate to contact us in case you have further questions. We trust that we will find a workable solution and we would like to thank you very much in advance for your cooperation.

Yours sincerely,

Mariusz DACA
Deputy Head of Unit

Annex: [1]