



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE and CONSUMERS

Director-General

Brussels,
DG JUST/A2/SO/im/(2021)8673057

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Schönhauser Allee 6-7
10119 Berlin
Germany

Advance copy by email :
ask+request-10248-419f0891@asktheeu.org

Subject: Your application for access to documents – Ref GestDem No 2021/7317

Dear Mr Fanta,

We refer to your e-mail dated 22/11/2021 in which you make a request for access to documents, registered on 24/11/2021 under the above-mentioned reference number.

You request access to documents that contain the following information:

- Internal documents discussing a possible 'right to repair' of electronic devices dating as from January 1st, 2021 and;
- Documents from stakeholders concerning a possible "right to repair" since the beginning of 2021, including minutes of meetings, e-mails and other documents.

We consider your request to cover documents held up to the date of your initial application, i.e. 22 November 2021.

Your application concerns the following documents:

Number	ARES registration	Title	Date
1.	Ares(2021)1608577	Study on Durability of Products Federation of German Consumer Organizations	03-03-2021
2.	Ares(2021)2354180	FW: SGD review/Right to repair/SGD-DCD transposition MS workshop - short report	06-04-2021
3.	Ares(2021)2354220	FW: SGD review/Right to repair/SGD-DCD transposition MS workshop - short report	06-04-2021
4.	Ares(2021)2697999	FW: SGD review/Right to repair - Short Report	22-04-2021
5.	Ares(2021)2933331	SGD review/Right to repair - Short Report	03-05-2021
6.	Ares(2021)3022604	Flash report: ACM/JUST E1 + E3, 04.05.2021, 11:30-12:30	06-05-2021
7.	Ares(2021)3352552	RE: SGD review/Right to repair - Short Report	20-05-2021
8.	Ares(2021)3579988	Right to repair -Council working group - Short Report	31-05-2021
9.	Ares(2021)3842732	SGD Amendment/Right to Repair	11-06-2021
10.	Ares(2021)3872379	SGD Amendment/Right to Repair - Meeting with BEUC - Short Report	14-06-2021
11.	Ares(2021)7463582	Legislative proposal on the Right to Repair	27-09-2021
12.	Ares(2021)5875628	Request for a meeting - upcoming legislative on right to repair	27-09-2021
13.	Ares(2021)5875817	RE: right to repair legislation 2022	27-09-2021
14.	Ares(2021)6105704	Meeting with future FR Pres. - Short report	07-10-2021
15.	Ares(2021)6107118	SGD/R2R - Meeting with EP Greens/IMCO advisor - Short report	07-10-2021
16.	Ares(2021)6211987	SGD/R2R Meeting with Right to Repair coalition - Short report	12-10-2021
17.	Ares(2021)6309059	Right to Repair - Meeting with BEUC - Short Report	15-10-2021
18.	Ares(2021)6996371	Interservice Steering Group for the initiative on the Right to Repair (PLAN/2021/11514) - Consultation on the documents for call for evidence and public consultation	15-11-2021
19.	Ares(2021)6648449	Establishment of Inter service group for the initiative on the Right to Repair (PLAN/2021/11514)	22-10-2021

Full access

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we can inform you that access can be given fully to the document 1.

Partial access

In accordance with Article 4(6) of Regulation 1049/2001, we consider that we can grant you partial access to documents 6, 10-13, 16-19.

In this cases a complete disclosure of the identified documents is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001. This provision provides that *the institutions shall refuse access to a document where 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 requested documents contain personal data such as names or e-mail addresses, which have been redacted.

Article 9(1)(b) of the Data Protection Regulation does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the requested documents, as the need to obtain access there to 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.

Exceptions

Documents 2-5, 7-9, 14, 15

With regard to documents 2-5, 7-9, 14, 15 listed above, a disclosure of the identified documents is prevented by the exception concerning the decisions which have not yet been taken by the Commission.

Disclosure of the documents requested would undermine the protection of the decision-making process of the Commission, as it would reveal preliminary views and policy options which are currently under consideration; the Commission's services must be free to explore all possible options in preparation of a decision free from external pressure. Therefore, the exception laid down in Article 4(3) first subparagraph of Regulation (EC) No 1049/2001 applies to these documents.

Article 4(3), first subparagraph, of Regulation 1049/2001 provides that *[a]ccess to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if the disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure*.

Pursuant to settled case-law, the above-mentioned exception may be applied where disclosure of preparatory documents would result in a serious, non-hypothetical and objectively justified risk of self-censorship¹. The General Court acknowledged that *the Commission must [...] be placed in a position to decide [...] wholly independently, in the general interest and free from any external pressure or third-party influence [...] on the policy initiatives to be proposed. [...] This is all the more important in order to preserve the essence of the power of initiative conferred on the Commission by the Treaties and its capacity to assess, wholly independently, the appropriateness of a policy proposal. More specifically, it is important to protect that power of initiative from any influences exerted by public or private interests which would attempt, outside of organised consultations, to compel the Commission to adopt, amend or abandon a policy initiative and which would thus prolong or complicate the discussion taking place within that institution*².

The documents to which you request access are related to a policy initiative on a right to repair. Diverging views exist on important points about the need of such a right, its potential conditions and resulting impacts. In this context, the Commission is currently considering a potential legislative proposal and the decision-making process is still ongoing. Disclosing documents on internal discussions among Commission services on potential future initiatives would effectively deprive the Commission of having frank, internal discussions at non-political level prior to launching a formal proposal. As a result, the Commission would no longer benefit from the frankly-expressed and complete views required of its agents and officials and would be deprived of a constructive form of internal criticism, provided free of all external constraints and pressure, required for adoption of rational decisions.

The exceptions laid down in Article 4(2) and 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. We have examined whether there could be an overriding public interest in disclosure, but that we have not been able to identify such an interest. Also, your request does not point to specific circumstances which would require the access to these documents despite the fact that they refer to a potential future decision which has not yet been taken.

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

¹ Judgment of 18 December 2008, *Muñoz v. Commission*, T-144/05, EU:T:2008:596, paragraphs 89 and 90; judgment of 10 January 2013, *My Travel v. Commission*, T-403/05, EU:T:2008:316, paragraph 52.

² Judgment of 13 November 2015, *ClientEarth v. Commission*, T-424/14 and T-425/14, EU:T:2015:848, paragraphs 94 and 95.

According to standard operational procedure, the reply to a request for access to documents is usually sent by registered post. Please note, however, that due to the extraordinary health and security measures currently in force during the COVID-19 pandemic, which include the requirement for all Commission non-critical staff to telework, we are unfortunately not in a position to follow this procedure until further notice.

We would therefore appreciate if you could confirm receipt of the present e-mail by replying to just-a2@ec.europa.eu.

Yours faithfully,

(e-signed)
Ana GALLEGO