Subject: Your application for access to documents – GESTDEM 2022/1152

Dear Mr Henning,

I refer to your e-mail dated 22 February 2022 in which you make a request for access to documents, registered on 24 February 2022 under the above mentioned reference number.

You request access to “All documents related to the states of transposition of Directives 2017/1132 and 2019/1151, especially those concerning the EU's assessments of these transpositions and any potential reaction taken to it, including discussions of potential or actual infringement procedures”.

I consider your request to cover documents held up to the date of your initial application, i.e. 24 February 2022.


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5 Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (OJ L 258, 1.10.2009, p. 11).
the European Parliament and of the Council. These Directives were substantially amended several times and, in the interests of clarity and rationality, Directive (EU) 2017/1132 codified them. Therefore, the transposition of these rules has taken place by the Member States based on the original Directives over the years. This means that no specific transposition measures were taken for the Codified Company Law Directive.


Article 2 of Directive (EU) 2019/1151 sets the deadlines for the transposition. The main rule is that Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 August 2021. However, according to paragraph 2 of Article 2, for certain provisions, the transposition deadline is longer: 1 August 2023.

In addition, paragraph 3 of Article 2 provides that Member States which encounter particular difficulties in transposing this Directive shall be entitled to benefit from an extension of the main transposition period of up to one year. They shall provide objective reasons for the need for such extension. Member States had to notify the Commission of their intention to avail of such an extension by 1 February 2021. 17 Member States (Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Finland, France, Germany, Hungary, Luxembourg, Netherlands, Poland, Romania, Slovenia, Slovakia, Sweden) availed themselves of the possibility to have such an extension of one year, i.e. by August 2022.

The remaining Member States were supposed to transpose the relevant provisions of the Directive by 1 August 2021. The transposition measures notified by the Member States are publically available: EUR-Lex - 32019L1151 - EN - EUR-Lex (europa.eu).

The Commission sent Letters of Formal Notice to those Member States who have not availed themselves of the possibility provided by the Directive to have an extension of the transposition period and have not communicated transposition measures by 1 August 2021. These concern ongoing investigations regarding a possible infringement of EU law (2021/0364, 2021/0400, 2021/0406, 2021/0412, 2021/0446, 2021/0452, 2021/0469, 2021/0487). Public information on these procedures is available on the following link Infringement Decisions (europa.eu).

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7 Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ L 315, 14.11.2012, p. 74).


9 Company law and corporate governance | European Commission (europa.eu)
Apart from the information available on [Infringement Decisions (europa.eu)], I regret to inform you that access cannot be granted to Letters of Formal Notice and Member States’ replies, as disclosure is prevented by an exception to the right of access laid down in Article 4 of Regulation (EC) No 1049/2001.

Indeed, disclosure of these documents 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 Article 4(2) third indent of Regulation (EC) No 1049/2001 applies to the documents related to infringements.

I have examined whether there could be an overriding public interest in disclosure, but I have not been able to identify such an interest.

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 Brussels
or by email to: sg-acc-doc@ec.europa.eu

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-A3@ec.europa.eu.

Yours sincerely,

(e-signed)
Ana GALLEG0