Subject: Your application for access to documents – Ref EASE No 2022/5679

Dear Mr Schmalenberger,

We refer to your request for access to documents, registered on 6 October 2022 under number 2022/5679.

You request access to the reasoned opinion from the European Commission to Germany regarding the failure to notify complete transposition measures for Directive (EU) 2018/844 on the energy performance of buildings.

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 exception to the right of access laid down in Article 4 of this Regulation.

Specifically, the reasoned opinion from the European Commission to Germany regarding the failure to notify complete transposition of Directive (EU) 2018/844 on time relates to an ongoing investigation regarding a possible infringement of EU law (INFR(2020)0164).

The purpose of the pre-litigation procedure is to give the Member State concerned an opportunity, on the one hand, to comply with its obligations under European Union law

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and, on the other, to avail itself of its right to defend itself against the objections
formulated by the Commission\(^2\).

Disclosure of the documents requested would undermine that purpose and 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 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 this document.

The Court of Justice has recognised the existence of a general presumption that
disclosure of the documents relating to an infringement procedure would, in principle,
undermine the protection of the purpose of investigations within the meaning of the third
indent of Article 4(2) of Regulation (EC) No 1049/2001, as long as the infringement
procedure in question is pending.\(^3\)

In view of the content of the document, partial access would also be inconceivable, since
the document as a whole falls within the general presumption of non-disclosure laid
down by the Court. The document is entirely covered by the exception described above.

I regret to inform you, therefore, that access to the requested document cannot be granted
as it falls under the exception pursuant to Article 4(2), third indent, of Regulation (EC)

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 of 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

Yours sincerely,

                                                                                             (e-signed)

Ditte Juul Jørgensen

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\(^2\) Judgement of the Court in Case C-147/03 Commission v Austria [2005] ECR I-5969, paragraph 22,
and Case C-522/09 Commission v Romania [2011] ECR I-2963, paragraph 15

\(^3\) Judgement of the Court in Joined Cases C-514/11 P and C-605/11 P, Liga para a Protecção da
Natureza (LPN) and Republic of Finland v European Commission, ECLI:EU:C:2013:738, paragraph 65