



EUROPEAN COMMISSION

Brussels, 19.7.2018
C(2018) 4907 final

Mr Mathias SCHINDLER
Bundestagsbüro Julia Reda MEP
Unter den Linden 50
11011 Berlin
Germany

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2018/811**

Dear Mr Schindler,

I refer to your letter of 22 May 2018, registered on 25 May 2018, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter 'Regulation 1049/2001').

1. SCOPE OF YOUR REQUEST

In your initial application of 5 February 2018, addressed to the Directorate-General for Communications Networks, Content and Technology, you requested access to '[a]ny document since 2015 that relates to an ancillary copyright ("Leistungsschutzrecht" für Presseverleger), both referring to existing or proposed laws in EU Member States [...][and to] any information relating to the introduction of such right into EU legislation.'

You further specified that 'the information sought for is sometimes called "publishers' right", "neighbouring right" or similar.' You explained that you were 'especially but not exclusively looking for information in the form of proposals, memos, studies, notes, meeting records, letters to Commissioner Oettinger and his successors and Cabinet staff members dealing with EU copyright and the protection of press publishers by application

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L 145 of 31.5.2001, p. 43.

or amendment of EU copyright law.’ You also stated that ‘[you did] not consent to any narrowing of the scope or to the discarding of information if it is considered "unimportant" or has not yet been filed, archived or registered. This includes draft notes and internal correspondence.’ You specified that this ‘request refers to documents that were not released via the Access to Documents request 2016/4441.’

The Directorate-General for Communications Networks, Content and Technology contacted you with a view to finding a fair solution based on Article 6(3) of Regulation 1049/2001, as your application related to a very large number of documents.

Following your agreement on 27 March 2018 to the fair solution proposed by the Directorate-General for Communications Networks, Content and Technology, the latter sent you a first reply on 5 April 2018 partially disclosing 18 documents (Ares(2018)1833352).

Following 30 consultations of third parties, the second initial reply, partially disclosing 105 documents, was sent to you on 8 May 2018 (Ares (2018)2435520). Please find attached the list of documents falling under the scope of that second reply. The redactions were based on Article 4(1)(b) (protection of privacy and the integrity of the individual), Article 4(2), first indent (protection of commercial interests of a natural or legal person, including intellectual property) and Article 4(3), first subparagraph (protection of the decision-making process).

Through your confirmatory application, you request a review of the second reply of 8 May 2018.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

In the framework of this review, the Secretariat-General wrote to you on 13 June 2018 with a view to finding a fair solution based on Article 6(3) of Regulation 1049/2001. It also requested you to specify if your previous 21 requests for access to documents were introduced on behalf of your employer, as it would seem from your postal address that these requests related to your professional activity as assistant to Member of the European Parliament Ms REDA.

The Secretariat-General also asked you to specify the objective of your request and your specific interest in the documents requested³, and whether you could significantly narrow down the scope of your request, so as to reduce it to a more manageable amount of documents.

³ Judgment of 22 May 2012 in *EnBW Energie Baden-Württemberg v Commission*, Case T-344/08, EU:T:2012:242, paragraph 105.

It informed you that, according to its preliminary workload estimate, the handling of all documents falling under the scope of your request would require more than 194 working days of one full-time equivalent (FTE), covering the following steps:

- search for possible additional documents falling within the scope of your request (two working days);
- quick screening of the documents and preliminary assessment of your confirmatory request (two working days);
- contacts and exchanges with the line Directorate-General concerning its initial reply and your arguments brought forward in your confirmatory application (five working days);
- conducting several third-party consultations, including Member States, under Article 4(4) of Regulation 1049/2001 and (possibly) a further dialogue with the third party (30 working days);
- assessment of replies provided by the third parties in collaboration with the line Directorate-General (30 working days);
- (possible) overruling of the opposition of third parties to disclose documents originating from them, including contacts with the line Directorate-General and the Legal Service (20 working days);
- assessment of the documents, also with a view of (possibly) granting (further) partial access and (possible) redactions of the relevant parts protected under exceptions to Regulation 1049/2001 (70 working days);
- preparation of the draft reply (20 working days);
- consultation of the line Directorate-General and the Legal Service on the draft reply (20 working days);
- finalisation of the reply at administrative level and formal approvals of the draft decision, final check of the documents to be released (where applicable), and dispatch of the reply (15 working days).

I would like to underline that all the documents listed in annex II of the initial reply were refused. Their assessment would necessitate extensive consultations with the third parties, Member States or other third parties whose views were reflected in the documents. Such consultations are particularly time consuming, because they necessitate a constructive dialogue with the consulted parties following the actual consultation and a focused analysis to determine a coherent Commission position regarding the (partial) release of the documents requested.

The estimated workload corresponded to the time of one Commission staff member working full time on your request, and was based on experience with requests concerning the same type of documents. The Secretariat-General also explained that the staff member concerned would, during the same period of time, have to perform also other

tasks, including, for example, the handling of other confirmatory requests lodged by you⁴ and by other citizens in order to safeguard the interests of good administration. The Secretariat-General informed you that, consequently, your request could not be handled within the extended period of 30 working days.

With a view to reaching a fair solution concerning the handling of your confirmatory request, taking into account the workload already engendered by assessing the workload of handling your request, and in order to respect the time limits set by Regulation 1049/2001, it proposed to:

- exclude from the scope of your confirmatory application the personal data that had been redacted based on Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation 1049/2001;
- exclude from the scope of your confirmatory application any document which is/was dealt with in the framework of another initial or confirmatory application you or your employer had filed;
- limit the scope of the confirmatory decision to documents relating to the decision-making process of the Commission, thus excluding documents relating to meetings with persons working for the European Parliament, as this information was probably already known to you in the context of your work in the European Parliament;
- focus your confirmatory applications on documents relating to the decision-making process of the Commission, thus excluding documents relating to the Council's activities;
- deal with an overall number of ten documents in the context of this review.

Alternatively, it asked you to examine again the list of documents provided to you by the initial decision (annexed), with a view to determining whether you could significantly narrow down the scope of your request (i.e. specific documents in which you are interested, the subject matter(s) and/or timeframe covered), so as to reduce it to the above-mentioned, more manageable number of ten documents.

Alternatively, it proposed that you choose ten individual documents from the annexed list of documents.

On 14 June 2016, you replied that you had filed all your requests in your capacity as a private person, without replying to any of the alternative proposals with a view to finding a fair solution for handling your wide-scoped confirmatory request.

The EU Courts have acknowledged that 'it flows from the principle of proportionality that the institutions may, in particular cases in which the volume of documents for which access is requested or in which the number of passages to be censured would involve an

⁴ Registered under reference number GESTDEM 2018/1846.

inappropriate administrative burden, balance the interest of the applicant for access against the workload resulting from the processing of the application for access in order to safeguard the interests of good administration'⁵.

Furthermore, the General Court has recently, in its judgment of 14 December 2018, clarified the obligations of the institution in case the handling of the request would represent an unreasonable workload. It stated that 'where the institution has adduced proof of the unreasonableness of the administrative burden entailed by a specific, individual examination of the documents referred to in the request, it is obliged to try to consult with the applicant in order, firstly, to ascertain or to ask him to specify his interest in obtaining the documents in question and, secondly, to consider specifically whether and how it may adopt a measure less onerous than a specific, individual examination of the documents'.⁶

In the present case, the Secretariat-General wrote to you on 13 June 2018 with a view to finding a fair solution based on Article 6(3) of Regulation 1049/2001. It explained to you in detail the administrative burden that the handling of your confirmatory request would entail, also taking into account that you had lodged simultaneously another wide-scoped confirmatory request registered under reference number GESTDEM 2018/1846, which it has to examine in the same period. You did not contest the administrative burden that the examination of your confirmatory request would entail.

The Secretariat-General also asked you to specify the objective of your request and your specific interest in the documents requested. You did not reply to this request. Furthermore, the Secretariat-General made several alternative proposals to you with a view to reducing the disproportionate administrative burden relating to the handling of your confirmatory request to a more manageable number of documents. You did not reply to any of these proposals. I note that in your initial application you stated that '[you] do not consent to any narrowing of the scope of your request'.

I conclude that the Commission has given you the opportunity to specify your specific interests, proposed several alternative solutions for rendering the disproportionate administrative burden more manageable, and has already provided you (partial) access to 105 documents, amounting to 589 pages, at initial stage. Against this background, and in light of the amount of work entailed as well as the absence of replies concerning your specific interests and the alternative proposals made by the Commission, the Commission is not in a position to handle your request.

Indeed, if the Commission were to proceed to the assessment of a random selection of documents without having the assurance that you would indeed be interested in receiving only a selection of documents (instead of all the documents covered by your request), this

⁵ Judgments of 6 December 2001, *Council v Hautala*, Case C-353/99 P, EU:C:2001:661, paragraph 30, and of 2 October 2014, *Strack v Commission*, Case C-127/13 P, EU:C:2014:2250, paragraph 27.

⁶ Judgment of the General Court of 14 December 2017, *Evropaïki Dynamiki - Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Parliament*, Case T-136/15, paragraphs 81-82.

would engage the Commission's scarce resources in an exercise of which the usefulness would be uncertain. This, in turn, would lead to a potential misuse of public resources, in contradiction with the principles of sound financial management and good administration to which the Commission is bound pursuant to Article 310(5) of the Treaty on the Functioning of the European Union.

3. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

For the Commission
Martin SELMAYR
Secretary-General

