



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND
TECHNOLOGY

The Director-General

Brussels,

Mr. Mathias Schindler
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11011 Berlin
Germany

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REGISTERED MAIL WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your application for access to documents – GestDem 2019/7172

Dear Mr Schindler,

We refer to your application for access to documents submitted under Article 2(1) of Regulation 1049/2001 on public access to documents (hereinafter, ‘Regulation 1049/2001’) received on 16/11/2019 and registered on 20/11/2019 under the above-mentioned reference number.

1. SCOPE OF YOUR APPLICATION

In your application, you requested access to the following documents:

“In 2015, DG GROW wrote a Note for the attention of L. Romero Requena concerning Legal guidance on the scope of Directive (EU) 2015/1535 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services in relation to the rules on ancillary copyright adopted in Germany and Spain.

The reference number is: GROW/B/2 (2015) 4899298, a copy can be found at Ref. Ares(2019)7073401 - 15/11/2019.

I am requesting all information held by the European Commission including the Legal Service concerning the notification requirements of the German ancillary copyright law as well as the spanish ancillary copyright law. This includes any communication between Legal Service and DG Grow preceeding and following the request from 2015.

I want all information to be included, including those information that was not deemed important, not registered under eDomec rules etc., for example emails, notes, drafts, comments etc.”

As you have been informed, your request was split into three separate requests¹ and DG CONNECT is concerned with the part of your requests which relates to “...all information held by the European Commission including the Legal Service concerning the notification requirements of the German ancillary copyright law as well as the spanish ancillary copyright law.”

2. DOCUMENTS FALLING WITHIN THE SCOPE OF YOUR REQUESTS

Most of the documents which have been identified as falling within the scope of the part of the request which concerns DG CONNECT are the same documents which were already provided to you (in full or through partial access) by DG GROW in the context of its reply in GestDem 2019/5565 dated 15/11/2019 ([Ares\(2019\)7073401](#)). These documents were not identified again in the context of this request.

The following are the documents which we have identified as falling within the scope of your application and which were not already covered by GestDem 2019/5565:

Documents relating to a complaint received by the Commission from a stakeholder in 2015 (CHAP(2015)02897):

- **Document 1:** Complaint letter received by the Commission in 2015 (including a supporting document);
- **Document 2:** Pre-closure letter sent by the Commission to the complainant dated 12 June 2019 (our reference, Ares(2019)3743591).

Documents relating to a complaint received by the Commission from a stakeholder in 2016 (CHAP(2016)01816):

- **Document 3:** Complaint letter received by the Commission in 2016 (including 8 supporting documents falling within the scope of your application);
- **Document 4:** Pre-closure letter sent by the European Commission to the complainant on 11 June 2019 (our reference, Ares(2019)3717100).

Documents relating to a complaint received by the Commission from a stakeholder in 2017 (CHAP(2017)00318):

- **Document 5:** Complaint letter received by the European Commission in 2017 (including 3 supporting documents falling within the scope of your application);
- **Document 6:** Pre-closure letter sent by the European Commission to the complainant on 12 June 2019 (our reference, Ares(2019)3743591)

¹ GestDem 2019/6767 – Legal Service, GestDem 2019/7172 – DG CONNECT, GestDem 2019/7175 – DG GROW.

3. ASSESSMENT UNDER REGULATION 1049/2001

Having examined the documents requested under the provisions of Regulation 1049/2001 and taking into account that these documents relate to complaints submitted by third parties who have not consented to the disclosure of their identity and to the disclosure of these documents, we have come to the conclusion that disclosure has to be refused to the entirety of the documents given that it is prevented by the following exceptions to the right of access laid down in Article 4 of Regulation 1049/2001:

a) Protection of privacy and integrity of individuals

Parts of the documents identified as falling within the scope of your request contain personal data, in particular names, functions, contact details and handwritten signatures of European Commission staff and third parties. Disclosure of these parts is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation 1049/2001.

Article 9(1)(b) of Regulation 2018/1725², 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, we conclude that, pursuant to Article 4(1)(b) of Regulation 1049/2001, access cannot be granted to the personal data contained in the requested documents, as the need to obtain access thereto 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. Disclosure must therefore be refused to the aforementioned parts of these documents.

b) Protection of commercial interests

Article 4(2) first indent of Regulation 1049/2001 provides that the institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure.

This provision must be interpreted in light of Article 339 of the Treaty of the Functioning of the European Union (TFEU), which requires staff members of the EU institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

² Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

Some parts of the documents identified as falling within the scope of your request indicate the identity of the companies putting forward complaints to the European Commission concerning potential breaches of EU law. Taking into consideration the fact that the complainants have not consented to the disclosure of their identity and the fact that disclosure of this information would put non-public positions of these companies into the public sphere, we consider that this constitutes commercially sensitive information protected under Article 4(2) first indent of Regulation 1049/2001. Consequently, disclosure must be refused to the aforementioned parts of these documents.

Following the redactions made for personal data for the reasons set out in Section 3(a) of this letter and the aforementioned parts for which disclosure is being refused on the basis of Article 4(2), first indent, partial access to the remaining parts of these documents has been rendered meaningless. Therefore, access to these documents must be refused.

4. CONFIRMATORY APPLICATION

In accordance with Article 7(2) of Regulation 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 Secretariat-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)
Roberto Viola