



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP
AND SMES

The Director-General

Brussels

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**Subject: Your applications for access to documents – ref. EASE No. 2022/6329 and
EASE No. 2022/6331**

Dear Sir,

We refer to your requests for access to documents sent on 3/11/2022 and registered on 7/11/2022 under the above mentioned reference numbers, in follow-up of your request GestDem No 2022/5107.

Your application concerns the following documents: *the complaints and, if existing, letters of formal notice send from the Commission to the respective governments and their replies for the EU Pilot and CHAP cases listed below:*

1. CHAP(2017)01012
2. CHAP(2017)01393
3. CHAP(2019)00012
4. CHAP(2019)00140
5. CHAP(2019)00301
6. CHAP(2019)00341
7. CHAP(2019)01598
8. CHAP(2019)01819
9. CHAP(2019)01901
10. CHAP(2019)02117
11. CHAP(2019)02286
12. CHAP(2021)03747
13. CHAP(2021)04205
14. CHAP(2022)01498
15. CHAP(2021)03632

16. *CHAP(2017)03901*
17. *CHAP(2019)01865*
18. *CHAP(2020)01276*
19. *EUP(2018)9350*
20. *EUP(2019)9406*
21. *EUP(2019)9414*
22. *EUP(2019)9436*
23. *EUP(2019)9445*
24. *EUP(2020)9671*
25. *EUP(2020)9672*
26. *EUP(2020)9739*
27. *EUP(2020)9740*
28. *EUP(2020)9760*
29. *EUP(2021)9828*
30. *EUP(2021)9995*
31. *EUP(2022)10247*
32. *EUP(2022)10248*
33. *EUP(2022)10251*

Please note that this reply relates only to the documents held by the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW), as some of the cases mentioned concern other Directorates-General.

As mentioned in our previous reply, having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we would like to inform you that partial access can be granted to the information related to the following documents held by DG GROW:

1. Complaint registered as EUP(2019)9436 (former CHAP(2018)01164)
 - a. complaint form
2. Complaint registered as CHAP(2019)01598 (related to INFR(2020)4140 which was treated under INFR(2018)4185)
 - a. CHAP(2019)01598 complaint of 03.06.2019 (with annexes)
 - b. CHAP(2019)01598 complement to the complaint of 26.09.2019
 - c. CHAP(2019)01598 complement to the complaint of 18.10.2019
 - d. CHAP(2019)01598 annexes to the letter of 18.10.2019
 - e. CHAP(2019)01598 complement to the complaint of 02.12.2019 (with annexes)
 - f. CHAP(2019)01598 complement to the complaint of 30.7.2020
 - g. INFR(2018)4185 – letter of formal notice of 08.03.2019
 - h. INFR(2018)4185 – reply from the Austrian authorities of 05.07.2019 (ref. BKAVV.18/4185/0003-IV/9/2019) to the Commission's letter of formal notice

- i. INFR(2018)4185 – reply from the Austrian authorities of 16.01.2020 (ref. BKA-VV.18/4185/0011-IV/9/2019) to the Commission’s letter of formal notice
 - j. INFR(2018)4185 - reply from the Austrian authorities of 18.06.2020 (ref. 2020-0.346.585) to the Commission’s letter of formal notice
- 3. Complaint registered as CHAP(2017)01012 (related to INFR(2017)4042)
 - a. CHAP(2017)01012 – complaint form
 - b. INFR(2017)4062 – reply from the Commission to the complainant

For these complaints, we enclose copies of the documents requested.

However, the documents referred to above cannot be disclosed in their entirety because they contain the following personal data, due to the exception relating to the protection of privacy and the integrity of the individual laid down in Article 4(1)(b) of Regulation (EC) No 1049/2001:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;
- the names/initials and contact details of other natural persons;
- handwritten signatures/abbreviated signatures of natural persons.

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 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.

Furthermore, documents related to complaint CHAP(2019)01598 (INFR(2020)4140 treated under INFR(2018)4185) have also been partially redacted on parts of their substance by request of the complainant on the grounds of the exception laid down in Article 4(2) first indent of Regulation (EC) No 1049/2001 (“protection of commercial interests of a natural or legal person, including intellectual property”).

In addition, as regards files which are related to the complaint which has been closed, namely case:

1. EUP(2020)9672 (former CHAP(2019)01125)

I would like to inform that the access to the requested documents cannot be granted since the complainant opposed the disclosure of these documents evoking the exception laid down in Article 4(2) second indent of Regulation (EC) No 1049/2001 (“protection of Court proceedings and legal advice”).

You may reuse public documents, which have been produced by the European Commission or by public and private entities on its behalf based on the Commission Decision on the reuse of Commission documents. You may reuse the document disclosed free of charge and for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the document. Please note that the Commission does not assume liability stemming from the reuse.

However, I regret to inform you that your application cannot be granted for 21 out of the 25 cases dealt with by our Directorate, as disclosure is prevented by exception to the right of access laid down in Article 4 of this Regulation. Indeed, the following documents which you seek to obtain relate to ongoing investigations regarding possible infringements of EU law:

1. Complaint registered under CHAP(2017)01393 relates now to infringement registered under reference INFR(2018)4170 which is affiliated to INFR(2017)2076
2. Complaint registered under CHAP(2019)00012 relates now to infringement registered under reference INFR(2020)4118
3. Complaint registered under CHAP(2019)00140 relates now to infringement registered under reference INFR(2020)4006
4. Complaint registered under CHAP(2019)00301 relates now to infringement registered under reference INFR(2020)4118
5. Complaint registered under CHAP(2019)00341 relates now to infringement registered under reference INFR(2020)4118
6. Complaint registered under CHAP(2019)01819 relates now to infringement registered under reference INFR(2020)4004
7. Complaint registered under CHAP(2019)01901 relates now to infringement registered under reference INFR(2020)4004
8. Complaint registered under CHAP(2019)02117 relates now to infringement registered under reference INFR(2020)4004
9. Complaint registered under CHAP(2019)02286 relates now to infringement registered under reference INFR(2020)4005
10. Complaint registered under CHAP(2021)03747 relates now to infringement registered under reference INFR(2022)4104

11. Complaint registered under CHAP(2021)04205 relates now to infringement registered under reference INFR(2022)4104
12. Complaint registered under CHAP(2022)01498 relates now to infringement registered under reference INFR(2022)4076
13. Complaint registered under CHAP(2021)03632 relates now to infringement registered under reference INFR(2021)4066
14. Complaint registered under CHAP(2017)03901 relates now to infringement registered under reference INFR(2018)2301
15. Complaint registered under CHAP(2019)01865 relates now to infringement registered under reference INFR(2018)2283
16. Complaint registered under CHAP(2020)01276
17. Complaint registered under EUP(2020)9739 relates now to infringement registered under reference INFR(2020)4011
18. Complaint registered under EUP(2020)9740 relates now to infringement registered under reference INFR(2021)4063
19. Complaint registered under EUP(2020)9760 relates now to infringement registered under reference INFR(2018)4183
20. Complaint registered under EUP(2021)9828 relates now to infringement registered under reference INFR(2021)2274
21. Complaint registered under EUP(2021)9995 relates now to infringement registered under reference INFR(2022)2020

Disclosure of the requested documents would undermine the protection of the purpose of the ongoing investigation; indeed, 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 these documents.

We have considered whether partial access could be granted to the documents requested. However, this is not considered possible since the documents in question are covered by the above-mentioned exception in their entirety.

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 document.

Although the right of access to documents is in the public interest, it is nevertheless outweighed by the conflicting public interest at hand of solving the ongoing investigation in a manner which could remove the identified barriers on the EU Single Market, which may be in conflict with the Services Directive. As explained above, disclosure of the documents at this stage could endanger the outcome of the investigation, which is of overriding public 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 Bruxelles

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

Yours faithfully,

[electronically signed]

Kerstin Jorna