



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Director General

Mr Matthias Schindler

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Brussels, 31 JUL. 2015
GROW/B/2/CO/KS/bml
GROW.B.2 (2015)3485473

Subject: Your application for access to documents – Ref GestDem No 2015/3352

Dear Mr Schindler,

We refer to your e-mail dated 22 June 2015 in which you make a request for access to documents, registered under the above mentioned reference number.

Your application concerns

- *"all information (including letters, emails, documents, notes, memoranda, studies, remarks, copies, data, files, facsimiles, drafts and records) about the notification under Directive 98/34/EC related to the German Presseverlegerleistungsschutzrecht (Achstes Gesetz zur Änderung des Urheberrechtsgesetzes dated May 7, 2013 (BGBl 2013 I Nr. 23 ,pg 1161)*

This includes information related to the letter sent from the Commission (DG Enterprise and Industry) Unit C3 on February 27 2013 to Germany and any prior and subsequent information.

- *all information (see above) about the notification under that directive to the Spanish "canon AEDE" or "Ley 21/2014, de 4 de noviembre, por la que se modifica el texto refundido de la Ley de Propiedad Intelectual, aprobado por Real Decreto Legislativo 1/1996, de 12 de abril, y la Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil."*

The documents identified as relevant for your request are listed in the attached table. As communicated in the e-mail of 17 March 2015 (Ares(2015)1192313), under the procedure set up by Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services,

Member States are required to notify technical regulations (as defined by the Directive) at a draft stage. The German act, which was adopted on 7 May 2013, was not notified. Therefore, in analysing the documents pertinent to your request, we considered those documents that relate to the non-notification of the above mentioned German act. You will find these documents in the table attached, positions 1 to 12.

As regards the Spanish legislation, the table indicates in the positions 13-41 the documents identified as relevant for your request.

In addition, on 10 May 2013, the Spanish authorities notified under Directive 98/34/EC an initial draft of the law amending the Recast Text of the Spanish Intellectual Property Act, adopted by Royal Legislative decree 1/1996 of 12 April 1996, and act 1/2000 of 7 January 2000 on Civil Procedure (notification 2013/244/E); the adopted text was communicated to the Commission on 5 November 2014. These documents are publicly available, along with the notification message, on the TRIS website following this link:

<http://ec.europa.eu/growth/toolsdatabases/tris/en/search/?trisaction=search.detail&year=2013&num=244>

Finally, other documents that enter in the scope of your request are publicly available. These are the parliamentary questions E-002358/2015, E-010198/2014, E-6993/2014, E-5574/2015 and the answers provided by the Commission, accessible via <http://www.europarl.europa.eu/plenary/en/parliamentary-questions.html#sidesForm>

1) Partial access

a) Article 4(2), 3rd indent - protection of the purpose of investigations

Having examined the comments issued by the Commission in the framework of the notification 2013/244/E (listed at number 21 in the table attached), I have come to the conclusion that the document may be partially disclosed. A part of the document has been blanked out as its disclosure is prevented by the exception to the right of access laid down in Article 4 of Regulation (EC) 1049/2001 regarding public access to European Parliament, Council and Commission documents.

The expunged part of the document pertains to an ongoing investigation. I refer you to the exception to the right of access provided for in Article 4(2), 3rd indent of Regulation (EC) 1049/2001, according to which access shall be refused “where disclosure would undermine the protection of ... the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.”

Point 2 of the comments issued by the Commission in the framework of notification 2013/244/E is linked to the EU Pilot procedure 4098/12/MARKT, which investigates the compliance of the provisions of the Spanish legislation concerning private copying with Article 5(2)b of Directive

2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society.

Disclosure of the document requested would undermine the protection of the purpose of the ongoing investigation; indeed, disclosure of the document would affect the dialogue and the mutual trust between the authorities of the Member State and the Commission. Therefore, the exception laid down in Article 4(2) 3rd indent of Regulation (EC) No 1049/2001 applies to this document.

b) Article 4(1)(b) – protection of personal data

The documents to which you have requested access, with the exception of the documents listed at Nos 21 and 37, contain personal data.

Personal data of non-senior management staff appearing therein have been redacted, as have the personal data of the third parties with whom the Commission was in correspondence. (Personal data is disclosed only for those documents in relation to which the consulted third party has expressly consented to it.) This partial disclosure is grounded on Article 4(1)(b) of Regulation (EC) 1049/2001 concerning the protection of the privacy and integrity of individuals.

Pursuant to Article 4(1)(b) of Regulation (EC) 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data. The applicable legislation in this field is Regulation (EC) 45/2001 on the protection of individuals with regard to the processing of personal data by the Union institutions and bodies and on the free movement of such data.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable¹.

According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and/or that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned.

In case you would disagree with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection,

¹ Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

you are entitled, in accordance with Article 7(2) of Regulation (EC) 1049/2001, to make a confirmatory application requesting the Commission to review this position.

2) No access

a) Documents originating from the Spanish authorities

Since some of the documents concerned originate from third parties, the originators of the documents have been consulted.

I hereby inform you that the documents listed at Nos 14, 17, 18, 20 and 22 in the attached table are not disclosed. These documents contain: the reply sent by the Spanish authorities to the questions of the Commission services in relation to the re-notification of the legislation on copyright (14, 17, 18, 20) and the reply of the Spanish authorities to the Commission comments issued in the framework of the notification 2013/244/E(22). Following the consultation under Article 4(5) of Regulation (EC) 1049/2001, the Spanish authorities objected to the disclosure of these documents and motivated their refusal on the exceptions in Articles 4(1)a, 4(2) and 4(3) of Regulation (EC) 1049/2001. The Spanish authorities claim in particular that these documents constitute information submitted to the Commission and in relation to which the Commission has not yet taken a decision, as well as that the information requested once disclosed could be used to place the current legal framework in a state of insecurity and it could prejudice its defence.

Please note that the e-mails sent by the Commission services and listed at Nos 16 and 19 in the attached table contain direct and indirect quotations from the documents originating from the Spanish authorities; these parts have been blanked out in view of the non disclosure of the original documents.

b) Commission documents listed at Nos 39, 40, 41

Having examined the documents listed at Nos 39, 40, 41 under the provisions of Regulation (EC) 1049/2001, I hereby 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. These documents contain opinions for internal use as part of deliberations and preliminary consultations that lead to the final reply to the written question P-6993/2014 (this final answer is available at <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2014-006993&language=EN>.) These documents contain views that are only partially reflected and in certain cases inexact and thus may mislead as regards the opinion of the Commission services in relation to the Spanish legislation. Disclosure of these opinions for internal use exchanged between the services as part of preliminary consultations would significantly affect the decision-making process of the Commission. Therefore, the disclosure thereof is prevented by the exception to the right of access laid down in Article 4 (3) of this Regulation.

3) Overriding public interest in disclosure

The exceptions laid down in Article 4(2) and 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the document. However, in this case the public interest in making the content of the document requested public does not outweigh the harm disclosure would cause to the interests protected by the invoked exception.

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 Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/327
B-1049 Brussels

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'p. v. S. Calleja', written in a cursive style.

Daniel Calleja