



EUROPEAN COMMISSION

Brussels, 5.4.2018
C(2018) 2159 final

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European Parliament
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DECISION OF THE SECRETARY-GENERAL ON BEHALF OF THE 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 2017/7578**

Dear Ms Reda,

I refer to your email of 16 February 2018, registered on 19 February 2018, wherein 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 documents (hereinafter 'Regulation 1049/2001').

1. SCOPE OF YOUR REQUEST

In your initial application, submitted on 20 December 2017 and handled by the Directorate-General for Communication Networks, Content and Technology, you requested access to *documents which contain the following information:*

- *all information held by DG CNECT in relation to the JRC study "The economics of online news aggregation and neighbouring rights for news publishers". This includes emails, letters, memos from and to JRC as well as to other parties as well as internal communication. This specifically includes all information relating to the study in the form of communication with third parties and other DGs or Commission units. This also includes information held by CNECT relating to this study if the study was named differently at some point in time;*

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

- *all information held by CNECT, including information that is not considered important and/or was not filed, archived or registered in ARES or other systems. You do not agree to restriction of the search to ARES and other filing systems as this might result in incomplete results for the access to documents request;*
- *all information - regardless of medium - about the decision making process relating to the release of this study included in this request as well as any information about other decisions to release or not to release this study. This includes notes and memos, minutes and protocols concerning phone calls held with JRC and others such as the phone call on or before May 29, 2017;*
- *on June 15, CNECT was asked by JRC to provide sources and citations for some claims made during the commenting of the study. You want this communication and any information held by CNECT related to this task to be included in this request.*

The Directorate-General for Communication Networks, Content and Technology replied to your request on 12 February 2018. It referred to the initial reply of Directorate-General Joint Research Centre, provided to you under GestDem Reference Number 2017/6751. The Directorate-General for Communication Networks, Content and Technology also explained that it does not hold any further documents that would fall under the scope of your request.

Through your confirmatory application, you contest this position, arguing that *[i]t is implausible that DG CNECT claims to have no information.*

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.

Following your confirmatory application, the European Commission has carried out a renewed, thorough search for possible further documents falling under the scope of your request.

2.1. Documents identified in cases 2017/6751, 2017/7583, 2017/7585 and 2017/7593

I note that, before submitting your present confirmatory application with GestDem Reference Number 2017/7578 to the European Commission, you already requested a review of the initial replies of other Commission services concerning the same subject matter:

- Directorate-General Joint Research Centre (GestDem Reference Number 2017/6751),
- European Policy and Strategic Centre (GestDem Reference Number 2017/7583),

- Directorate-General for Trade (GestDem Reference Number 2017/7585), and
- Directorate-General for Competition (GestDem Reference Number 2017/7593).

I note that the European Commission has already adopted confirmatory decisions following those confirmatory applications.

The documents, which the European Commission identified as falling under the scope of your confirmatory application with GestDem Reference Number 2017/7578, had also been identified in the framework of the above-mentioned confirmatory decisions.

I confirm that the conclusion of the European Commission's assessment in the respective confirmatory decisions is still valid, and that the factual and legal circumstances leading to that conclusion have not changed. Consequently, access to those documents is partially refused based on the reasoning set out in the Commission decisions concerning your confirmatory applications 2017/6751, 2017/7583, 2017/7585 and 2017/7593.

2.2. No further documents identified in the present case 2017/7578

Following a renewed search, I confirm that the European Commission does not hold any further documents that would correspond to the description given in your application.

As you indicate, the respective draft study has triggered oral discussions (for example, in bilateral meetings and phone calls dedicated to the clarification of factual and technical issues of this study, including *sources and citations*). Nevertheless, no minutes or protocols concerning those oral discussions have been drawn up.

In your request, you also refer to the documents, disclosed by Directorate-General Joint Research Centre following your initial application in case 2017/6751. You argue that on 29 May 2017, *DG CNECT ordered JRC not to release the study "as confirmed with [CNECT] hierarchy"*.

I would like to clarify that the consultations about the respective draft study were conducted at operational level (i.e. between competent units). Following the receipt of the study, the competent unit of the Directorate-General for Communication Networks, Content and Technology explained to its author that before publication the draft needed significant improvements and that the unit would provide comments on the study.

Consulting all Commission services, competent on a given file, is a normal procedure during the preparation of a study before it can be published by the European Commission.

In light of this, the competent unit in the Directorate-General for Communication Networks, Content and Technology (specifically, its policy officer *after having confirmed with his immediate hierarchy, i.e. his Head of unit*) requested from the author of the draft study to refrain from publishing the draft study until further notice.

The respective discussion between the author of the draft study and the competent unit in the Directorate-General for Communication Networks, Content and Technology referred only to the technical characteristics of the draft study, namely that the draft study would require more work (i.e. proper consolidation amongst competent Commission services) before its publication.

Consequently, and taking into account that the study is still in draft status and subject to further changes, the European Commission does not hold any documents containing information about *decisions to release or not to release the respective study*.

As specified in Article 2(3) of Regulation 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

Given that the European Commission does not hold any further documents corresponding to the description given in your application, it is not in a position to handle your request.

3. MEANS OF REDRESS

Finally, I would like to 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 Article 263 and Article 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

For the Commission
Martin SELMAYR
Secretary-General



Martin Selmayr