

EUROPEAN COMMISSION

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

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Mr Mathias Huter
Annagasse 8/1/8
1070 Vienna

Email address: ask+request-4968-2ee9d8bb@asktheeu.org

**Subject: Your application for access to documents -
Ref GestDem No 2018/0418**

Dear Mr Huter,

We refer to your e-mail dated 04/01/2018 in which you make a request for access to documents, registered on 18/01/2018 under the above mentioned reference number.

You request access to:

1. electronic copies of (or links to) the reports that Austria, Germany, Slovenia, Slovakia, Estonia, Lithuania and the United Kingdom have submitted to the Commission in line with Article 83, Paragraph 3, of the Directive 2014/24/EU on public procurement;
2. any document from the year 2017 that relates to Austria's compliance with Directive 2014/24/EU and any steps or actions the Commission is considering or has taken in response to Austria's failure to implement the directive into national law;
3. any legal opinions or interpretations held by the Commission (developed by the Commission, Member States or third parties) that clarify or discuss Directive 2014/24/EU, Article 83, Paragraph 5, and its implementation, especially concerning the requirement that Member States provide access to contracts.

Your application concerns the following document/documents:

1. Reports issued by Member States following their obligation pursuant to Article 83 (3) of Directive 2014/24/EU

Given the delayed transposition of the procurement directives in many Member States, the Commission had received only one procurement report so far from Germany who has made the report available on its web portal:

<https://www.bmw.de/Redaktion/DE/Artikel/Wirtschaft/reform-der-eu-weiten-vergaben.html>

We are expecting to receive the reports from most Member States with a one year delay, i.e. for April 2018. We hope Member States have used this additional time to draft a high-quality report which reflects a sufficient period of experience with the new procurement legislation. Please note that all of these reports will be published on the Commission's website

2. Austria has failed to communicate the transposition measures of Directives 2014/23/EU, 2014/24/EU and 2014/25/EU. For each of these directives, we have opened an infringement procedure, NIF 2016/0245, NIF 2016/0246 and NIF 2016/0247.
3. Regarding Article 83 (5) of Directive 2014/24/EU, the Commission has not issued any legal opinion or interpretation. Therefore, there are no documents to which the Commission can give access to.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that disclosure of the documents relating to the infringements (NIF 2016/0245, NIF 2016/0246 and NIF 2016/0247) against the Republic of Austria (see Annex 1) is prevented by exception to the right of access laid down in Article 4 (2) of this Regulation.

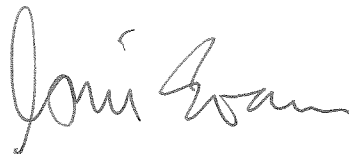
On 7 December 2017 the Commission has decided to refer the Republic of Austria to the Court of Justice.¹ Therefore, disclosure would undermine the protection of the court proceedings. In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting 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 5/282
B-1049 Bruxelles

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

Yours sincerely,



Lowri Evans

Encl. Annex 1 Table listing documents related to NIF 2016/0245, NIF 2016/0246 and NIF 2016/0247

¹ The press communication is available on the following webpage:
http://europa.eu/rapid/press-release_IP-17-4771_en.htm

ANNEX 1 – TABLE LISTING ALL DOCUMENTS RELATED TO NIF 2016/0245, NIF 2016/0246 AND NIF 2016/0247

AUTHOR	ADDRESSEE	DATE	TITLE	REFERENCE
European Commission	Republic of Austria	26/05/2016	NIF 2016/0245 Letter of formal notice	SG(2016)D/6873
Republic of Austria	European Commission	18/07/2016	Former Reply to the Letter of formal notice	INF(2016)112250
Republic of Austria	European Commission	28/10/2016	Former Reply to the letter of formal notice	INF(2016)112791
European Commission	Republic of Austria	09/12/2016	NIF 2016/0245 Reasoned opinion	SG(2016)D/18635
Republic of Austria	European Commission	18/01/2017	Request for extension of deadline	INF(2017)113263
European Commission	Republic of Austria	25/01/2017	Reply to request for extension of deadline	INF(2017)113263
Republic of Austria	European Commission	08/02/2017	Reply to reasoned opinion	INF(2017)113478
Republic of Austria	European Commission	13/06/2017	Reply to reasoned opinion	INF(2017)114264
Republic of Austria	European Commission	01/08/2017	Reply to reasoned opinion	INF(2017)114549
European Commission	Republic of Austria	26/05/2016	NIF 2016/0246 Letter of formal notice	SG(2016)D/6873
Republic of Austria	European Commission	18/07/2016	Former Reply to the Letter of formal notice	INF(2016)112251
Republic of Austria	European Commission	28/10/2016	Former Reply to the letter of formal notice	INF(2016)112792
European Commission	Republic of Austria	09/12/2016	NIF 2016/0246 Reasoned opinion	SG(2016)D/18636
Republic of Austria	European Commission	18/01/2017	Request for extension of deadline	INF(2017)113262
European Commission	Republic of Austria	25/01/2017	Reply to request for extension of deadline	Ares(2017)406580
Republic of Austria	European Commission	08/02/2017	Reply to reasoned opinion	INF(2017)113479
Republic of Austria	European Commission	13/06/2017	Reply to reasoned opinion	INF(2017)114265
Republic of Austria	European Commission	01/08/2017	Reply to reasoned opinion	INF(2017)114550
European Commission	Republic of Austria	26/05/2016	NIF 2016/0247 Letter of formal notice	SG(2016)D/6873
Republic of Austria	European Commission	18/07/2016	Former Reply to the Letter of formal notice	INF(2016)112252
Republic of Austria	European Commission	28/10/2016	Former Reply to the letter of formal notice	INF(2016)112793
European Commission	Republic of Austria	09/12/2016	NIF 2016/0247 Reasoned opinion	SG(2016)D/18637
Republic of Austria	European Commission	18/01/2017	Request for extension of deadline	INF(2017)113261
European Commission	Republic of Austria	25/01/2017	Reply to request for extension of deadline	Ares(2017)406593
Republic of Austria	European Commission	08/02/2017	Reply to reasoned opinion	INF(2017)113480
Republic of Austria	European Commission	13/06/2017	Reply to reasoned opinion	INF(2017)114266
Republic of Austria	European Commission	01/08/2017	Reply to reasoned opinion	INF(2017)114551