



EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels, 15 January 2020

Mr Mathias Schindler
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Unter den Linden 50
11011 Berlin
Germany

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BY E-MAIL AND REGISTERED MAIL WITH ACKNOWLEDGMENT OF RECEIPT

Subject: Your application for access to documents – reference GestDem 2019/5977

Dear Mr Schindler,

I refer to your request for access to documents, under Regulation (EC) No 1049/2001¹, asking " [...] – *any information concerning the recently closed ECJ case on the notification of the German Leistungsschutzrecht.* " This case has been identified as being C-299/17, *VG Media Gesellschaft zur Verwertung der Urheber- und Leistungsschutzrechte von Medienunternehmen mbH v Google LLC*²

On 12 December 2019 the Commission's Legal Service sent you a reply³ concerning the documents relating to Case C-299/17. In that reply, the Legal Service identified 12 documents, out of which 10 were entirely disclosed with the exception of some personal data. Regarding the 2 remaining documents *i.e.* the written observations submitted by Greece and Spain, the Legal Service informed you that the procedure of consultation with the respective national authorities, under Article 4(4) of Regulation (EC) No 1049/2001, were still pending and that a separate reply would be sent regarding those documents.

The present reply concerns therefore the written observations submitted by Greece and Spain.

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (Official Journal L 145, 31.05.2001, page 43).

² <http://curia.europa.eu/juris/liste.jsf?language=fr&num=C-299/07>

³ Ares(2019)7641071.

1. DISCLOSURE OF THE WRITTEN OBSERVATIONS OF GREECE

Following the Commission's consultation, the Greek government has agreed to the disclosure of its submission.

Accordingly, you will find enclosed a German translation⁴ of the requested document. Please note that the Court of Justice transmitted to the Commission the disclosed document in its capacity as participant in the court proceedings at stake. Access is granted for information only and cannot be re-used without the agreement of the originator, who holds the copyright on it. It does not reflect the position of the Commission and cannot be quoted as such.

2. REFUSAL OF THE WRITTEN OBSERVATIONS OF SPAIN

The Spanish authorities have informed the Commission that they refuse access to their written observations since they consider that they are covered by the exception provided for in Article 4(2), second indent⁵, of Regulation (EC) No 1049/2001. In fact, although Case C-299/17 is now closed, the national authorities consider that disclosure of the requested document would prejudice the transposition of Directive (EU) 2019/790⁶, in particular Articles 15 and 16, which set up a protection system of press publications concerning online uses. In addition, the Spanish government considers that the referred ongoing process could lead to future judicial proceedings and, therefore, disclosure of the requested document could harm the procedural strategy of Spain, including its right of defence.

In the light of the above, the Spanish authorities consider that their written observations are entirely covered by the exception laid down in Article 4(2), second indent, of Regulation (EC) No 1049/2001 and cannot be disclosed.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Pursuant to Article 4(2) of Regulation (EC) No 1049/2001, the exception to the right of access must be waived if there is an overriding public interest in disclosing the requested document. In order for an overriding public interest in disclosure to exist, this interest, firstly, has to be public and, secondly, overriding, i.e. in this case it must outweigh the interest protected under Article 4(2), second indent. In the present case, there are no elements showing the existence of an overriding public interest in disclosure of the refused document that would outweigh the public interest in the protection of the ongoing process and the right of defense argued by the Spanish authorities.

4. MEANS OF REDRESS

Should you wish this position to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretariat-General at the following address:

⁴ Translation made by the services of the Court of Justice. The original version was in Greek and an English translation is not available.

⁵ "[T]he institutions shall refuse access to a document where disclosure would undermine the protection of: [...] – court proceedings and legal advice, [...] unless there is an overriding public interest in disclosure".

⁶ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (Official Journal L 130, 17.05.2019, page).

European Commission
Secretariat-General
Unit C.1. "*Transparency, Document Management & Access to Documents*"
BERL 7/76
B-1049 Bruxelles

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

Yours sincerely,



Luis ROMERO REQUENA

Attachment: 1