



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR JUSTICE AND CONSUMERS

The Director-General

Brussels  
JUST.C.2/PAB

Mr. Alexander Schmalenberger  
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**Subject: Your application for access to documents – ref. 2022/5675**

Dear Sir,

I refer to your request of 6 October 2022 for access to European Commission documents, registered under the reference 2022/5675.

Your application for access to documents concerns the reasoned opinions sent by the Commission to Austria, Belgium, Romania and Slovenia, for their failure to notify the measures taken to transpose Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law <sup>(1)</sup>, by the deadline of 17 December 2021.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents<sup>2</sup>, I regret to inform you that your application cannot be granted, as disclosure is prevented by the exception to the right of access laid down in Article 4 of this Regulation.

The documents you seek to obtain relate to ongoing investigations regarding a possible infringement of EU law (infringement cases INFR(2022)0004, INFR(2022)0011, INFR(2022)0167 and INFR(2022)0181).

Disclosure of the documents requested would undermine the protection of the purpose of the ongoing investigations; indeed, disclosure of the documents at this point in time would affect the climate of mutual trust between the authorities of these Member States and the Commission, which is required to enable them to resolve the cases without having to refer them to the Court of Justice.

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<sup>(1)</sup> OJ L 305, 26.11.2019, p. 17–56

<sup>2</sup> 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 (OJ 2001, L 145, p. 43).

Therefore the exception laid down in Article 4(2) third indent of Regulation (EC) No 1049/2001 applies to the documents requested.

We have considered whether partial access could be granted to the documents requested, but we consider that they are entirely covered by the exception under the third indent of Article 4(2) of Regulation 1049/2001.

The exception laid down in Article 4(2) of Regulation (EC) No 1049/2001 applies unless there is an overriding public interest in disclosure of the documents. The European Commission is not in possession of any information that would justify such a disclosure on the basis of the existence of an overriding public interest. In any case, we consider that the public interest is better served in this case by ensuring the conclusion, in a spirit of good collaboration and trust, of the procedure and the related exchanges with the Member States, without jeopardising such a dialogue for which a climate of trust is essential.

Consequently, we consider that, in this instance, the use of the exception under Article 4(2), third indent of Regulation 1049/2001 on the grounds of protecting the purpose of the ongoing investigations of the alleged infringements is justified.

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](mailto:sg-acc-doc@ec.europa.eu)

We would appreciate if you could confirm the receipt of the present e-mail by replying to: [JUST-C2-CHARTe@ec.europa.eu](mailto:JUST-C2-CHARTe@ec.europa.eu).

Yours faithfully,

Ana GALLEGO