

(SG)

From: [redacted] (CNECT)
Sent: 05 October 2016 16:07
To: SJ ACCES DOCS; [redacted] (SJ); [redacted] (CNECT); [redacted] (CNECT)
Cc: [redacted]; CNECT R4 LEGAL-QUESTIONS; [redacted] (SG)
Subject: RE: request to the SG for splitting the request - comments to DG CNECT - Access to doc - new request of access - GestDem 2016/5265
Attachments: Summary Record 2016_04250.pdf
Categories: A SUIVRE, [redacted]

Dear [redacted],

I was in a meeting with [redacted] from the unit concerned by the above request (DG CONNECT I.2 - Copyright) this morning just before lunch time, during which we could clarify certain aspects, while others not yet.

Our understanding so far is that the LS sees itself responsible for those two docs exchanged in emails this Monday 03/10 (10:20 h, from [redacted] (CNECT)

[redacted] [@ec.europa.eu](mailto:[redacted]@ec.europa.eu) to me, with you [redacted] (SJ) [redacted] [@ec.europa.eu](mailto:[redacted]@ec.europa.eu) in copy; and later, 11:49 h, from you/ SJ ACCES DOCS SJ-ACCES-DOCS@ec.europa.eu to, amongst other, SG DOSSIERS ACCES SG-DOSSIERS-ACCES@ec.europa.eu in CC for splitting the request – the split did not happen so far, I was just confirmed by SG ACCESS on the phone).

The unit in charge (I.2) seem indeed to have identified further documents, comprising, according to their initial draft answer written contributions from DG EAC, DG GROW and DG JUST within ISC/2016/04250.

We as A2D coordinator for DG CONNECT in unit R.4, when consulting the ISC/2016/04250 on DECIDE, did only have access to/identify as potentially pertinent doc the here attached [Summary Record 2016_04250.pdf](#).

From this morning's meeting I understood that there exist individual docs submitted by DG EAC, DG GROW and DG JUST, which (also) deal with this specific Article 13 (etc) point. Yet, we in unit R.4 have not seen these docs, since they were/are not accessible to us in DECIDE.

[redacted] and/or [redacted], could you kindly confirm this (including the number and kind of further identified docs) and/or share those docs – also with the LS?

For the here attached Summary Record document we would rather see a shared responsibility between LS (for the LS contribution) and DG CONNECT for the other contributions, as far as being relevant within the scope of the request, the remainder of the doc being out of scope of the application (in case of splitting the request also applying to the LS contribution, as far as the request would be treated by DG CONNECT, and vice versa

for the parts being treated by DG CONNECT, as far as the request would be treated by SJ ACCESS DOCS).

Should the content of the Summary Record document in the relevant parts only show content which is absolutely identical with the individual input docs and NOT offer any added value in relation to the individual docs, this could be highlighted in any further correspondence to the requestor and further handled accordingly.

Thanks &
Best,

[REDACTED]

From: SJ ACCES DOCS
Sent: Wednesday, October 05, 2016 12:38 PM
To: [REDACTED] (CNECT)
Cc: SJ ACCES DOCS
Subject: RE: request to the SG for splitting the request - comments to DG CNECT - Access to doc - new request of access - GestDem 2016/5265

Dear [REDACTED],

I've tried to contact you by phone !

Pursuant to our conversation of yesterday we have once again assessed the Summary Record at stake.

The request by [REDACTED] is very precise and concerns "all Commission documents which include a legal opinion on the drafting of [Title IV, chapter 2 in particular on article 13 and recitals 37, 38, 39 and 40](#)" relating to the proposal COM(2016)593 (Draft Directive on the Copyright reform).
It results from the terms of the request that the only part of the Summary Record that would fall within its scope would be the point "value gap" (page 2).

In these circumstances, we consider that it's not worth splitting the request in two unless DG CNECT has identified other documents falling within the scope of the request. If from your side no other documents would be concerned, we propose that the Legal Service deal with the request at stake.
Could you please phone me or confirm this position ???

Thanks,

[REDACTED]

From: SJ ACCES DOCS
Sent: Tuesday, October 04, 2016 5:38 PM
To: [REDACTED] (CNECT); [REDACTED] (CNECT); [REDACTED] (CNECT); [REDACTED] (CNECT); [REDACTED] (CNECT)
Cc: SG DOSSIERS ACCES; SJ ACCES DOCS
Subject: RE: request to the SG for splitting the request - comments to DG CNECT - Access to doc - new request of access - GestDem 2016/5265

Dear colleagues,

We have internally discussed the question of the scope of this request concerning "all Commission documents which include a [legal opinion](#) on the drafting of Title IV ..." and the possibility advanced by DG CNECT of considering within the scope of the request only the legal opinions rendered by the Legal Service.

In this respect, we refer to the recent judgments of 15 September 2016 in cases T-710/14 and T-755/14 where the General Court states in points 48 et seq. that *"the concept of "legal advice" relates to the content of a document and not to its author or its addressees"*.


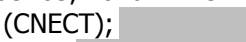



Therefore, in the light of the referred judgments, DG CNECT should consider the Summary Record of the fast-track meeting held on 31/08/16 as falling within the scope of the request insofar, after a concrete assessment, this document would contain legal advice provided by the different DGs .

We therefore consider that the request should be split in two: i) part to be dealt by DG CNECT and ii) part to be dealt by the LS relating to its legal opinions.

The Legal Service will consider, in turn, the parts of the Summary Record containing its legal advice as falling within the part of the request to be dealt with by it.

Kind regards,



Legal Service

From: SJ ACCES DOCS
Sent: Monday, October 03, 2016 11:49 AM
To:  (CNECT);  (CNECT);  (CNECT);
 (CNECT);  (CNECT)
Cc: SJ ACCES DOCS; SG DOSSIERS ACCES
Subject: request to the SG for splitting the request - comments to DG CNECT - Access to doc - new request of access - GestDem 2016/5265

Dear colleagues,





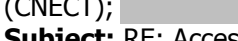
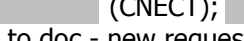
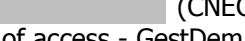
Thanks for your e-mails below and the attached draft reply and documents.

Having assessed the request and the identified documents, we confirm that the part of the request concerning legal opinions by the LS will be dealt with by it. Therefore, **we please ask the SG** to split the request and inform the requestor in this sense. Since the 1st deadline expires on 11 October we would very much appreciate if the deadline for the Legal Service could start as from the date of the splitting of the request.

DG CNECT: In your reply you should indicate that the part of the request concerning legal opinions by the Legal Service has been transferred to it and that  will receive a separate reply for this part of the request. You have not to identify any concrete document of the LS in your reply i.e. the note to the Head of Cabinet. We will do it in our response.

Kind regards,


Legal Service

From:  (CNECT)
Sent: Monday, October 03, 2016 10:20 AM
To:  (CNECT)
Cc:  (SJ); 
 (CNECT);  (CNECT);  (CNECT)
Subject: RE: Access to doc - new request of access - GestDem 2016/5265

Many thanks for this feed back [REDACTED]

All, you will find attached, in addition to the request of access from [REDACTED] and our draft letter, the two documents sent by the legal service referenced in our draft letter.

Regarding the other DGS, we would like to have a chat with you when possible. Thanks and best regards,

[REDACTED]

From: [REDACTED] (CNECT)
Sent: Friday, September 30, 2016 5:53 PM
To: [REDACTED] (CNECT)
Cc: [REDACTED] (SJ); [REDACTED] (CNECT); [REDACTED] (CNECT); [REDACTED] (CNECT)
Subject: RE: Access to doc - new request of access - GestDem 2016/5265
Importance: High

Dear [REDACTED]

Firstly, I wanted to inform you that – despite the below exchanges – for the time being this file will be accompanied by myself and [REDACTED] (as put in copy).

Secondly, and more important, we just had a phone call with the LS ([REDACTED]) and me with [REDACTED] from LS, see above under CC please).

The LS requests that you supply to them asap the A2D request plus the two identified docs/doc parts, for which you would like to invoke the 1049 Art. 4(2) "legal advice" exception.

The LS needs to perform themselves an assessment, whether those docs/doc parts are indeed falling under the scope of the request. If yes, the LS would become chef de file for the reply as far as their documents are concerned. In other words, in such case the GestDem request would need to be split between DG CONNECT and LS and partly reattributed (by SG B.4 A2D registry) to LS.

Therefore we should first wait for the decisive feedback of the LS on this.

Kindly keep is copied on the further developments.

In the meantime I will nevertheless have a further look at your draft, trying to give you some feedback by next Monday evening.

You should also consider receiving feedback from the other three DGs with pertinent input on the Fast-Track ISC, or at least informing your counterparts over there about the fact of the A2D request pending with DG CONNECT.

Best,

Pre-info for [REDACTED] from the LS already:

The A2D request (initial DL: 11/10/2016) of [REDACTED]

[REDACTED] reads

"On behalf of [REDACTED], I would like to request full public access to all Commission documents which include a legal opinion on the drafting of Title IV, chapter 2 in particular on article 13, and recitals 37, 38, 39 and 40 of the Commission's proposal for a directive on copyright in the digital single market (COM(2016) 593 final - 2016/0280 (COD))."

From: [REDACTED] (CNECT)
Sent: Friday, September 30, 2016 2:45 PM
To: [REDACTED] (CNECT)
Cc: [REDACTED] (CNECT); [REDACTED] (CNECT)
Subject: RE: Access to doc - new request of access

Hello [REDACTED]

Could we have another chat on this file when you have a few minutes?

Many thanks in advance,

Best regards,

From: [REDACTED] (CNECT)
Sent: Friday, September 30, 2016 10:14 AM
To: [REDACTED] (CNECT)
Cc: [REDACTED] (CNECT); [REDACTED] (CNECT); CNECT R4
LEGAL-QUESTIONS; [REDACTED] (CNECT); [REDACTED]
(CNECT)
Subject: RE: Access to doc - new request of access

Thanks for your quick answer [REDACTED]

Our intention is to disclose NO documents, on the basis of article 4.2 and/or 4.3 of the regulation. Could you please advise or amend the text accordingly? Many thanks in advance

Best,

From: [REDACTED] (CNECT)
Sent: Friday, September 30, 2016 9:37 AM
To: [REDACTED] (CNECT)
Cc: [REDACTED] (CNECT); [REDACTED] (CNECT); CNECT R4

LEGAL-QUESTIONS

Subject: RE: Access to doc - new request of access

Dear [REDACTED],

Thank you for your email. If I understand correctly, you are disclosing some of the requesting documents. If this is correct, please specify in the reply letter which documents you disclose and which are protected by the exception invoked.

Please do not forget to put R4 in Ares for visa.

Best,
[REDACTED]

From: [REDACTED] (CNECT)
Sent: Wednesday, September 28, 2016 6:23 PM
To: [REDACTED] (CNECT); [REDACTED] (CNECT); [REDACTED] (CNECT)
Cc: CNECT R4; [REDACTED] (CNECT); [REDACTED] (CNECT); [REDACTED] (CNECT)
Subject: Access to doc - new request of access

Dear All,

Your names were given to me by [REDACTED].

We received a request of access to docs from [REDACTED] on one particular issue of the copyright modernisation package. As you will see, the request is very specific ("legal opinions on the drafting of the proposal"). We have prepared the attached draft on which we would appreciate your comments and advice.

Many thanks in advance,

Kind regards,
[REDACTED]

Attached:

- Copy of the request of access
- Draft reply

[REDACTED]
Legal officer



European Commission

DG Communications Networks, Content and Technology (CONNECT)

Copyright Unit – F.5

Tel: +32 229-[REDACTED]

e-mail: [REDACTED]@ec.europa.eu

Find us on the web: http://ec.europa.eu/internal_market

For information on EU rights: <http://ec.europa.eu/youreurope>

The views expressed in this e-mail are my own and may not, under any circumstances, be interpreted as stating an official position of the European Commission.

