



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE

Director-General

Brussels, 07 MARS 2013
JUST/C2/MM/hk (2013) s326006

Mr M. Soha
by e-mail: ask+request-372-255927d0@asktheeu.org

Dear Mr Soha,

I refer to your e-mail of 10 February 2013 applying for access to documents which has been registered under Gestdem no. 2013/0698. In your e-mail, you have requested access to all correspondence between Commission and the UK Government linked to the Commission's reasoned opinion related to infringement 2011/2054.

On 22 June 2011 the Commission initiated infringement proceedings against the UK under Article 258 of the Treaty on the Functioning of the European Union (*TFEU*) for failure to transpose the Directive correctly. The infringement proceedings also cover the issue of Article 5(2). The UK authorities submitted their observations on 22 September 2011.

As the UK reply was not satisfactory, the Commission addressed to the UK authorities on 26 April 2012 a Reasoned Opinion under Article 258 TFEU and invited the UK authorities to take the necessary measures to comply with the Reasoned Opinion. The UK authorities replied on 24 July 2012. Their reply is under consideration.

Having reviewed the written exchanges between the Commission and the UK authorities on handling of your complaint, documents concerning the wider issue of non-compliance it raised and all other related documents the Commission holds, I have found that we hold the following three categories of documents:

- 1) letters and e-mails between the Commission and the UK authorities related to the investigation of the UK transposition of EU law – *in these documents, the Commission sets out its analysis of EU law and the UK authorities provide their interpretation and comments;*
- 2) internal reports of meetings with the UK authorities related to the investigation of the UK transposition of EU law – *in these documents the Commission summarises the exchange of views related to the investigation;*
- 3) internal legal assessments of the UK transposition of EU law – *in these documents the Commission sets out its assessment of EU and UK laws for the internal purposes of investigations and pursuing infringement proceedings against the UK.*

I regret to have to inform you that the documents you require come under the system of exceptions provided for in the European legislation related to access to documents, and that we cannot therefore provide them to you. The exception that applies to the documents you requested is enshrined in Article 4(2) third indent of Regulation No 1049/2001, according to which:

"The institutions shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure."

Indeed, the documents requested concern an on-going infringement procedure against UK, which, if disclosed, would undermine the protection of the purpose of the investigation of compliance of UK legislation with EU law. They consist of the interpretation of EU and UK laws by the Commission and the UK authorities which was exchanged in the framework of the assessment of the transposition of the Directive and possible infringement proceedings under Article 258 TFEU.

Infringement investigations call for genuine cooperation and mutual trust between the Commission and the Member State concerned so as to enable those two parties to open discussions with a view to a resolution of the dispute.

Please be advised that in accordance with point 7 of the Commission Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of community law (*COM(2002)141 final of 20 March 2002*), even the persons whose complaints are referred to in infringement procedure have only the right to be informed about the Commission's decision (*i.e. letter of formal notice, reasoned opinion, referral to the Court or closure of the cases*) and not the right to access to such documents.

I also consider that there is no overriding public interest in disclosing the documents despite the protection under Article 4(2) third indent of Regulation No 1049/2001. The information provided in the official Commission's press release¹ on the occasion of adoption of the Reasoned Opinion strikes the right balance between protecting the above interests and informing the public. There seems to be no need at this stage in further disclosing, even partially, details of the Commission's assessment of the UK law before the Court of Justice of the European Union provides an authoritative interpretation of EU law.

However, if you wish to appeal against this decision, you should write to the Commission Secretary-General at the address below, repeating your initial request. You have fifteen working days from receipt of this letter in which to appeal. Beyond this deadline, your initial request will be considered withdrawn.

The Secretary-General will inform you of the outcome of this re-examination of your request within fifteen working days of receipt of your request, either by granting you access to the document or by confirming the refusal. In the latter case, she will also inform you of any further appeal routes you may take.

All correspondence must be sent to:

The Secretary-General
European Commission
B-1049 BRUSSELS

Yours sincerely,



Françoise LE BAIL

¹ <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/417&language=EN>