



EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

Director-General

Brussels,
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***By registered letter with
acknowledgment of receipt***

Ms Isabella ADINOLFI
Member of the European Parliament
Parlement européen
Bât. Altiero Spinelli
07H246
60, rue Wiertz / Wiertzstraat 60
1047 Bruxelles/Brussel

Advance copy by email:
isabella.adinolfi@europarl.europa.eu

Subject: Your application for access to documents – Ref GestDem No 2017/2221

Honourable Member of the European Parliament,

Dear Ms Adinolfi,

I refer to your written question E-001690/2017. In your question you asked to have access to a letter sent by my Directorate General to Italy on 8/2/2017, containing observations on a draft Decree on the implementation of Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market ('the CRM Directive').

As indicated in the Commission's reply to your written question, we have treated your request as a public access to documents' request under Regulation 1049/2001 (registered on 10/4/2017 under the above mentioned number). We have subsequently informed you of the extension of our deadline to reply (letter Ares (2017)2294288 of 4/5/2017).

I can confirm that I have sent a letter to the Italian authorities on 8/2/2017 enquiring about the implementation of the CRM Directive in Italy. However, having examined the document requested under the provisions of Regulation 1049/2001, I regret to inform you that your application for access to this document cannot be granted, as disclosure is prevented by an exception to the right of access laid down in Article 4 of the said Regulation, i.e. the third indent of Article 4(2).

The document which you seek to obtain relates to an ongoing investigation concerning the implementation of EU law in the Member States, in particular the implementation of the CRM Directive in Italy, on which we have received complaints.

Disclosure of the document requested would undermine the protection of the purpose of the ongoing investigation. At this point in time such disclosure would affect the climate of mutual trust and the dialogue between the authorities of the Member State concerned and the Commission. Moreover, the EU General Court has ruled that the exception relating to the protection of the purpose of the investigation does not solely apply to documents relating to infringement proceedings which have been commenced but also to '*documents concerning investigations the outcome of which might be such proceedings*'.¹ Therefore, the exception laid down in the third indent of Article 4(2) of Regulation 1049/2001 according to which access shall be refused '*where disclosure would undermine the protection of ... the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure*' applies to this document.

We have considered whether partial access could be granted to the document requested. However, it is not possible to grant access to an expunged version of the document given that the document is entirely covered by the exception laid down in the third indent of Article 4(2) of Regulation 1049/2001.

Moreover, the exception laid down in the third indent of Article 4(2) of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the document. I have examined whether there could be an overriding public interest in disclosure, but I have not been able to identify such an interest in the present circumstances.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review the above positions.

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,

For the Director General absent
C. Bury
Deputy Director General



Roberto VIOLA

¹ Judgment of the General Court of 13 September 2013 in case T-111/11, *ClientEarth v European Commission*, paragraph 80.