



EUROPEAN COMMISSION  
Information Society and Media Directorate-General

The Director-General

Brussels, **28 JUL. 2011**  
INFSO/B-2/MP/ef  
Ares(2011)755074

Mr Peter [REDACTED]  
E-mail: p [REDACTED]

Dear Mr [REDACTED]

I refer to your e-mail dated 09/07/2011, which was registered on 12/07/2011 under the reference GESTDEM 2011/3818 as a request for access to documents under Regulation 1049/2001<sup>1</sup> regarding public access to European Parliament, Council and Commission documents.

In your e-mail you request information about the current status of the Commission's infringement proceeding 2009/2114 against the UK concerning confidentiality of communications and about the terms/settlement under which this proceeding has been suspended. You also request access to all correspondence between the Commission and the UK government concerning the decision to suspend the case and inquire about the absence of a press statement regarding the suspension decision.

In response, I can confirm that the Commission indeed decided on 19 May 2011 to suspend the application to the Court of Justice in this infringement case. This decision was taken following the submission by the UK Government, on 4 April 2011, to the UK Parliament for approval of the "Regulation of Investigatory Powers (Monetary Penalty Notices and Consents for Interceptions) Regulations 2011". (These Regulations were subsequently adopted on 26<sup>th</sup> May; text available at: <http://www.legislation.gov.uk/uksi/2011/1340/contents/made>).

These Regulations amend the Regulation of Investigatory Powers Act 2000 (RIPA) to remove the references to the implied consent and they establish a new sanction against unintentional interception, which is administered by the Interception of Communications Commissioner (ICC) who will also hear complaints about unlawful interception. We are currently awaiting confirmation from the UK authorities that the ICC has become fully operational regarding these new functions.

It should be noted that the Commission's decision to suspend a court reference is without prejudice to the possibility to reopen the court proceedings if appropriate.

The publication of press announcements regarding infringement proceedings are at the discretion of the Commission. Whilst there was no press statement regarding the decision

---

<sup>1</sup> OJ L145, 31.05.2001, page 43.

to suspend the reference to the Court in this particular proceeding, information about it has been provided in the infringements overview table that you had consulted on the Commission's Internet portal.

There was no negotiation between the Commission and the UK authorities regarding the Commission's decision to suspend the reference to the Court. Accordingly, there is also no correspondence on this specific issue.

At the same time, the correspondence between the Commission and the UK authorities regarding their planned measures to comply with the Reasoned Opinion also informed the Commission's decision to suspend the reference to the Court. I therefore interpret your access to documents request as covering the correspondence related to this infringement procedure, which was exchanged between the Commission and the UK authorities since the Commission's decision of 30 September 2010 to refer the case to the Court of Justice until its decision of 19 May 2011 to suspend the reference to the Court. The documents we have on record pertaining to this matter and the period of time are the following:

- Commission services' letter of 11 January 2011 (comments on the above-mentioned draft "Regulation of Investigatory Powers (Monetary Penalty Notices and Consents for Interceptions) Regulations 2011", which were discussed at meetings between the Commission services and the UK authorities on 11 November 2010 and 12 January 2011);
- UK authorities' letters of 12 October 2010, 17 December 2010, 20 January 2011, 7 March 2011, 18 March 2011, 5 April 2011 (presenting and explaining the draft "Regulation of Investigatory Powers (Monetary Penalty Notices and Consents for Interceptions) Regulations 2011" at their different stages of development and adoption).

These documents relate to an infringement procedure launched by the Commission against the UK which is still ongoing. I therefore regret to inform you that they continue to be covered by the exception laid down in Article 4(2), third indent (protection of the purpose of inspections, investigations and audits) of Regulation 1049/2001 because their disclosure could undermine the protection of the purpose of the infringement procedure against the UK. They cannot therefore be released under the terms of Regulation 1049/2001.

Furthermore, whilst the application of this exception has not been analysed and decided upon at this point in time, (a part of) these documents may also be covered by the exception laid down in Article 4(3) of Regulation 1049/2001, which requires the Commission to refuse public access to documents containing opinions for internal use as part of deliberations and preliminary consultations within the Commission. Regulation 1049/2001 also requires the Commission to consult the third party authors of documents, i.e. the UK authorities in this case, regarding the possible disclosure of such third-party documents. The possibility to release these documents is therefore not guaranteed also in case of closure of the current infringement proceeding.

The exception laid down in Article 4(2), third indent may be superseded if there is an overriding public interest in disclosure. I consider that in this case the public interest is best served by refraining from interference in the ongoing negotiations between the Commission and the UK authorities. Therefore, I consider that there is no overriding public interest in disclosure in the sense of the Regulation.

Having analysed the possibility of giving you a partial access to the requested documents, it appeared that it would not be possible without undermining the protection of the purpose of the ongoing infringement procedure.

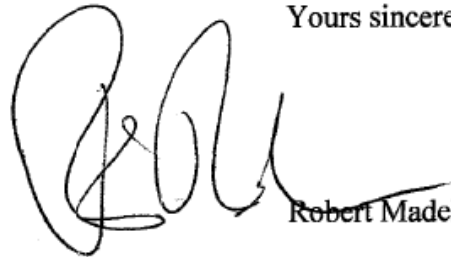
If you want this position to be reviewed you should write to the Commission's Secretary-General at the address below, confirming your initial request. You have fifteen working days in which to do so from receipt of this letter, after which your initial request will be deemed to have been withdrawn.

The Secretary-General will inform you of the result of this review within 15 working days from the registration of your request, either granting you access to the documents or confirming the refusal. In the latter case, you will be informed of how you can take further action.

All correspondence should be sent to the following address:

The Secretary-General  
European Commission  
B-1049 BRUSSELS  
Belgium.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'R. Madelin', written in a cursive style.

Robert Madelin