



---

P. NIKIFOROS DIAMANDOUROS

Mr Roy Schestowitz  
Sir Charles Groves  
4 Booth Street West  
M15 6PX Manchester  
Lancashire  
ROYAUME-UNI

Strasbourg, 20 -11- 2009

**Decision of the European Ombudsman closing complaint 1719/2009/(MAM)JF against the Commission**

Dear Mr Schestowitz,

On 25 June, 13 July, and 10 August 2009, you complained to the European Ombudsman that the Commission had failed to reply to your e-mail of 7 June 2009, relating to a request you had submitted previously for public access to its documents under Regulation 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 (the 'Regulation 1049/2001')<sup>1</sup>.

I subsequently contacted the relevant service of the Commission concerning your complaint. In response, the Commission informed me that it replied to you on 21 September and 9 October 2009.

Therefore, I consider that the Commission has taken steps to settle the matter and have closed the case.

I wish to point out that my inquiry related only to your complaint that the Commission failed to reply to your e-mail. It did not evaluate the substance of the Commission's reply to you.

Please find enclosed copies of the replies that the Commission sent to you on 21 September and 9 October 2009.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

Enclosure: Copies of the Commission's replies of 21 September and 9 October 2009

---

<sup>1</sup> OJ 2001 L 145.

**WEISKORN Michael**

**From:** Michele.Wauquaire@ec.europa.eu  
**Sent:** 13 October 2009 16:49  
**To:** FRANCO Juliano  
**Subject:** EO - Complaint by Mr Roy SCHESTOWITZ, ref. 1719/2009/JF: INFORMAL REPLY  
**Importance:** High



Dear Mr Franco,  
Please find below the reply sent by the Commission to the complainant on 21 September 2009.  
Best regards,

Michèle WAUQUAIRE  
Commission européenne/European Commission  
Secrétariat général / General-Secretariat  
SG.G.3 "CESE, CdR, Médiateur européen et parlements nationaux" / "European Economic and Social Committee, Committee of the Regions, European Ombudsman and National Parliaments"  
BERL 7/30  
Tel.: 32.2.2967900  
michele.wauquaire@ec.europa.eu  
Help save paper - do you need to print this email?

-----Original Message-----

**From:** ALLAN Fiona (INFSO) On Behalf Of PEDERSEN Lars Hindkjaer (INFSO)  
**Sent:** Monday, September 21, 2009 3:39 PM  
**To:** 'r@schestowitz.com'  
**Cc:** 's@schestowitz.com'; PEDERSEN Lars Hindkjaer (INFSO); ALLAN Fiona (INFSO)  
**Subject:** FW: Gestdem 2009/1562 FW: Document access application purpusant to Article 6 EC/1049/2001 (D/139848)

Dear Mr. Schestowitz,

Thank you for your email of 20th March, registered on 23rd March, applying for a copy of documents in accordance with Regulation (EC) N° 1049/2001 regarding public access to European Parliament, Council and Commission documents.

In this message you requested access to the following documents:

"I hereby request electronic access to all documents related to the Towards the European Software Strategy process in the possession of the EU-Commission, in particular access to the following documents:  
\* the list of participants in the industry expert group  
\* the list of WGs, WGs sleaders and observing Commission officials  
\* draft contributions of all industry Working groups on a the European Software Strategy  
\* draft input to all WG prepared by the Commission  
\* the participant list of the related meeting on January 20th in Brussels  
\* all submissions from industry to the ESS consultation under the applicable provisions of regulation 1049/2001 which grant me a right of access to all documents mentioned above."

We were, and still are, unable to identify the documents referred to in the 6th item "all submissions from industry to the ESS consultation", as notified to you in our emails dated 15th April 2009, 8th May 2009, 27th May 2009 and 5th June 2009.

We sent you the documents corresponding to the first five items in your request in our email of 5th June 2009. I would draw your attention to the fact that they can, in no

way, be reproduced or disseminated for commercial purposes unless we have first been consulted.

The documents that were sent were:

- \* the list of participants in the industry expert group: "list of participants in the industry expert group.pdf"
- \* the list of WGs, WGs sleaders and observing Commission officials: "Working Groups.pdf"
- \* the participant list of the related meeting on January 20th in Brussels: "Participants list 20th of January.pdf"
- \* draft input to all WG prepared by the Commission: "Moderator for the European Software Strategy Working Group SMEs Reduction of Fragmentation - D104400.tif" Please note that the email is a model for all the emails sent to the moderators

Please note that the following documents have been drawn up by independent experts and do not necessarily represent the European Commission's views and can in no way be reproduced or disseminated for commercial purposes unless we have first been consulted.

\* draft contributions of all industry Working groups on a the European Software Strategy:

- "WG1\_Future\_Internet.pdf"
- "WG2\_Technology and Business Trends in the Software Industry.pdf"
- "WG 3 - IPR, Standards, and Interoperability.zip"
- "WG4\_Public Procurement - Financing Software Innovation.pdf"
- "WG5\_SMEs-Reduction of Fragmentation.pdf"
- "WG6\_Skills.pdf"
- "WG7\_OSS.pdf"

\* draft input to all WG prepared by the Commission:  
"Software\_Strategy\_Issues\_Paper.pdf"

In our email dated 5th June 2009 we sent you the documents that we had identified from your original email dated 20th March 2009. In your reply, dated 7th June 2009, you subsequently informed us that "I shall ask again for more documents". To date, no request has been received by our services.

Yours sincerely,

Lars Hindkjær Pedersen

European Commission - DG Information Society and Media  
D3 - Software & Service Architectures and Infrastructures  
Office: BU25 3/148, B-1049 Brussels  
Tel: +32 2 296. 08. 51  
Fax: +32 2 296.70.18

-----Original Message-----

From: Roy Schestowitz [mailto:r@schestowitz.com]  
Sent: Sunday, June 07, 2009 4:58 PM  
To: PEDERSEN Lars Hindkjaer (INFSO)  
Cc: ALLAN Fiona (INFSO)  
Subject: Re: FW: FW: Gestdem 2009/1562 FW: Document access application purpusant to Article 6 EC/1049/2001 (A/625270)

-----BEGIN PGP SIGNED MESSAGE-----  
Hash: SHA1

>>> \* draft contributions of all industry Working groups on a the European Software Strategy  
>>> \* draft input to all WG prepared by the Commission  
>>> \* the participant list of the related meeting on January 20th in Brussels  
>>> \* all submissions from industry to the ESS consultation under the applicable provisions of regulation 1049/2001 which grant me a right of access to all documents mentioned above."

Hi,

Thank you. Some files are still missing.

I shall ask again for more documents, including written contributions of

the different participants. What you are giving me are the final papers,  
not the history of the whole editing process.

- - -

-- Best of wishes

Roy S. Schestowitz  
<http://Schestowitz.com> | GNU/Linux | PGP-Key: 0x74572E8E  
Freelance journalist @ <http://itmanagement.earthweb.com/>  
-----BEGIN PGP SIGNATURE-----  
Version: GnuPG v1.4.9 (GNU/Linux)

iEYEARECAAYFAkorlXUACgkQU4xAY3RXLo7RdQCfdg4cmSwlIHO07wieSujSVTOA  
BNYAn02DhraZlpdfCaBr4ILzdnBqy0VL  
=tb35  
-----END PGP SIGNATURE-----

**WEISKORN Michael**

**From:** Michele.Wauquaire@ec.europa.eu  
**Sent:** 30 October 2009 10:26  
**To:** FRANCO Juliano  
**Subject:** FW: EO - Complaint by Mr Roy SCHESTOWITZ, ref. 1719/2009/JF: FURTHER REPLY

**Importance:** High

**Attachments:** 1719-2009 R2.txt



1719-2009 R2.txt  
(5 KB)

Cher Monsieur,



Veuillez trouver ci-joint un échange d'emails entre le plaignant et la Commission :

- 1) email du plaignant daté du 21/9/09 à 16h05, réagissant à la première réponse que la Commission lui a envoyée le même jour à 15h39;
- 2) email de réponse de la Commission daté du 9/10/09 à 17h16.

Nous espérons ainsi qu'une réponse complète a été fournie au plaignant.

Bien à vous,

Michèle WAUQUAIRE  
Commission européenne/European Commission  
Secrétariat général / General-Secretariat  
SG.G.3 "CESE, CdR, Médiateur européen et parlements nationaux" / "European Economic and Social Committee, Committee of the Regions, European Ombudsman and National Parliaments"  
BERL 7/30  
Tel.: 32.2.2967900  
michele.wauquaire@ec.europa.eu  
Help save paper - do you need to print this email?

1719-2009 R2

From: ALLAN Fiona (INFSO)  
Sent: lundi 12 octobre 2009 9:48  
To: PEDERSEN Lars Hindkjaer (INFSO)  
Subject: FW: FW: Gestdem 2009/1562 FW: Document access application  
purpusant to Article 6 EC/1049/2001 (D/143168)

Forgot to put you in copy!

-----Original Message-----

From: ALLAN Fiona (INFSO) On Behalf of PEDERSEN Lars Hindkjaer (INFSO)  
Sent: Friday, October 09, 2009 5:16 PM  
To: 'r@schestowitz.com'  
Cc: ALLAN Fiona (INFSO)  
Subject: FW: FW: Gestdem 2009/1562 FW: Document access application purpusant to  
Article 6 EC/1049/2001 (D/143168)

Dear Mr. Schestowitz,

In the course of 2007 and 2008 a number of organisations made proposals to Commissioner Reding on the formulation of a strategy for software producers in Europe. In 2009 an attempt was made to synthesise the suggestions and build a single report.

To achieve this, the European Commission invited a broad spectrum of experts mostly from the software industry and the FLOSS community to participate in a number of working groups each treating a subject identified as being important for the European Software Industry. The result of the working groups are documented in a report from each of the working groups. These reports can also be found here  
[http://cordis.europa.eu/fp7/ict/ssai/europeansoftwarestrategy-documents\\_en.html#](http://cordis.europa.eu/fp7/ict/ssai/europeansoftwarestrategy-documents_en.html#)  
contributions. The content of the reports are agreed among the participants including the participants from the Floss community, unless stated otherwise.

Please note that these documents in no way form a software strategy nor a position of the European Commission. The process so far has simply sought to identify subjects which could form elements of a strategy and to discover which of them raised issues among participants with divergent interests. There is, as yet, no strategy. If one is eventually formulated it will be the subject of broad consultation as usual.

Please note that the working group reports are documents created and edited by the participants and not by the European Commission. The European Commission holds only the final versions agreed by the participants and these have already been sent to you.

Previous draft versions and the individual contributions may be in the possession of the participants. We are aware of the document which has been published on the Internet  
([http://wikileaks.org/wiki/European\\_Commission\\_OSS\\_Strategy\\_Draft%2C\\_Mar\\_2009](http://wikileaks.org/wiki/European_Commission_OSS_Strategy_Draft%2C_Mar_2009)), but we cannot comment on the document or its authenticity. As regards your interest in SAP's position, SAP has contributed with the following document  
[http://www.europeansoftware.org/documents/SAP\\_WP\\_FutureInternet.pdf](http://www.europeansoftware.org/documents/SAP_WP_FutureInternet.pdf) and has asked to have a number of notes to be included in the reports to clarify their position; these are all clearly marked in the reports already sent to you.

The reports will be used as input, together with many other inputs (see [http://cordis.europa.eu/fp7/ict/ssai/europeansoftwarestrategy\\_en.html](http://cordis.europa.eu/fp7/ict/ssai/europeansoftwarestrategy_en.html)), to investigate if any initiatives are needed from the European Commission to strengthen the European Software Industry.

The process has been as transparent as possible and the European Commission is also fully aware of the interests represented by the participants. The synthesis report is published, the working group reports contributing to it are published and the original contributions from interested parties are published. All the parties contributing to reports are listed on the reports.

1719-2009 R2

Please note that comments on the reports can be given using the following form [http://cordis.europa.eu/fp7/ict/ssai/europeansoftwarestrategy-documents\\_en.html#](http://cordis.europa.eu/fp7/ict/ssai/europeansoftwarestrategy-documents_en.html#) feedback and that any contribution describing how the software production in Europe can be strengthened is very welcome.

Yours sincerely,

Lars Hindkjær Pedersen

European Commission - DG Information Society and Media  
D3 - Software & Service Architectures and Infrastructures  
Office: BU25 3/148, B-1049 Brussels  
Tel: +32-(0)2-2963419 Fax: +32-(0)2-2967018

-----Original Message-----

From: Roy Schestowitz [mailto:r@schestowitz.com]  
Sent: Monday, September 21, 2009 4:05 PM  
To: PEDERSEN Lars Hindkjaer (INFSO)  
Cc: ALLAN Fiona (INFSO)  
Subject: Re: FW: Gestdem 2009/1562 FW: Document access application purpusant to Article 6 EC/1049/2001 (A/640736)

-----BEGIN PGP SIGNED MESSAGE-----  
Hash: SHA1

> In our email dated 5th June 2009 we sent you the documents that we had identified from your original email dated 20th March 2009. In your reply, dated 7th June 2009, you subsequently informed us that "I shall ask again for more documents". To date, no request has been received by our services.

Hi,

Thank you for the reply. When I wrote "I shall ask again for more documents" I meant to say "I hereby ask again for the documents". In particular, I wish to see the contributions of Mr. Zuck (he confirmed to me that he was in the panel) and SAP. ACT and SAP have a well documented track record of systematically stomping on Open Source software. Mr. Zuck has been a lobbyist for Microsoft for about a decade, so his role in this paper only help in substantiating allegations that the eventual outcome is manipulated by hostile edits. I adamantly believe that the process -- not just the output -- should be transparent.

-----BEGIN PGP SIGNATURE-----  
Version: GnuPG v1.4.9 (GNU/Linux)

iEYEARECAAYFAkq3iA0ACgkQU4xAY3RXLo67RgCggRVsYc213IsE4kRL95TGc3Xq  
9a8AoIcSB1VapBSAJ+gv7BsyZ81em5qq  
=z3dv

-----END PGP SIGNATURE-----