



## EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP  
AND SMES

Ecosystems IV: Mobility & Energy Intensive Industries

**I2. Mobility**  
Head of Unit

Brussels,  
GROW I2/SPR/(2022)

Mr Peter Teffer  
Follow the Money  
Overtoom 197  
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The Netherlands

*Sent by email only to:*  
[ask+request-11335-  
61b33045@asktheeu.org](mailto:ask+request-11335-61b33045@asktheeu.org)

**Subject: Your application for access to documents – GESTDEM 2022/3096 – proposal for a fair solution**

Dear Mr Teffer,

Thank you for your e-mail of 25 May 2022 which was registered at the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs of the European Commission on 30 May 2022, requesting access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L145, 31 May 2001, page 43 and following).

In your application, you requested access to:

“- An overview of all letters and e-mails sent and received since 11 May 2020, including date, of the following infringement cases:

20162179  
20162180  
20162182  
20162183  
20172044

- If any of these cases are closed, the content of those letters and e-mails since 29 February 2016”.

You further specified:

“I realise that for the cases that are still open, the Commission would invoke article 4.2 (the purpose of inspections, investigations and audits) on the content of the documents. However, an overview of the documents - the 'metadata' so to say - cannot in any way undermine the protection of the purpose of the infringement investigation.

This is a follow-up to my access to documents request registered on 15 June 2020 under reference number GESTDEM 2020/3640. On 28 July 2020, the Commission provided an overview of the 66 documents up until 11 May 2020. If all cases are still open, I would thus be satisfied with an overview of all documents dated later than 11 May 2020. If some or all cases have since then been closed, my request covers the documents listed in the overview provided in response to GESTDEM 2020/3640, and any which have been created/received since then.”

We have now completed the work on identifying the documents falling under the scope of your request.

One of the infringement cases, 2017/2044, is still open. For the documents falling under that scope, you will receive a separate reply.

The infringement cases 2016/2179, 2016/2180, 2016/2182 and 2016/2183 have been closed. Consequently, the second part of your request, covering the documents themselves in addition to the list of documents, becomes relevant.

We have identified 79 documents falling under the scope of your request. Thus the application concerns a high number of documents.

The work needed to reply to your request entails multiple steps:

- Retrieval and establishment of a complete list of the documents falling under the scope of your request (completed);
- Retrieval of the documents from document management database Ares and infringements management database Themis;
- Conversion of the documents to an editable PDF format;
- Preliminary assessment of the content of the documents in light of the exceptions of Article 4 of Regulation EC (No) 1049/2001;
- Third-party consultations under Article 4(4) of Regulation 1049/2001 and (possibly) a further dialogue with the third party originators;
- Final assessment of the documents in light of the comments received, including of the possibility of granting (partial) access;
- Redactions of the relevant parts falling under exceptions of Regulation EC (No) 1049/2001;
- Preparation of the draft reply;
- Finalisation of the reply at administrative level;
- Final check of the documents to be (partially) released and dispatch of the reply.

The completion of these steps with regard to a large number of documents cannot be expected to be completed within the normal time limits set out in Article 8 of Regulation 1049/2001.

As stated by the EU Courts, the European Commission needs to respect the principle of proportionality and ensure that the interest of the applicant for access is balanced against the workload resulting from the processing of the application for access in order to safeguard the interests of good administration<sup>1</sup>.

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<sup>1</sup> Judgment of the Court of First Instance of 13 April 2005, *Verein für Konsumenteninformation v Commission*, T-2/03, EU:T:2005:125, paragraph 102.

Article 6(3) of Regulation (EC) No 1049/2001 provides that in the event of an application relating to a very long document or to very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution.

In accordance with the case law of the EU Courts, a fair solution can only concern the content or the number of documents applied for, not the deadline for replying<sup>2</sup>. This means that the scope of your requests must be reduced in a way that would enable its treatment within the extended deadline of 15 + 15 working days.

According to our preliminary estimates, taking into account the workload of the DG GROW unit handling the request and the length and complexity of the documents at stake, it would seem that the Commission would be able to handle approximately 30 documents within the deadlines provided by Regulation 1049/2001, counting from your reply to our proposal for a fair solution.

Based on the above-mentioned provision, we would kindly ask you whether you could narrow down the scope of your request, so as to reduce it to a more manageable number (approximately 30).

In order to help you to narrow down your request, we attach a list of documents with specified dates, senders, addressees and subject matter of each document.

In order to enable us to provide you with a reply as soon as possible, we would ask you for a swift response to our proposal for a fair solution within five working days at the latest, by email to [grow-i2@ec.europa.eu](mailto:grow-i2@ec.europa.eu).

If you accept our proposal, please note that the multiple steps of the procedure described above will apply.

In the absence of a reply within five working days, we will unilaterally restrict the scope of your application to those parts that can be dealt with within the extended deadline of 30 working days, counting from the registration of your application<sup>3</sup>.

Thank you in advance for your cooperation.

Yours sincerely,

Mark Nicklas  
Head of Unit

Enclosure: Document register - Request GestDem 2022/3096

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<sup>2</sup> Judgment of the Court of Justice of 2 October 2014, *Guido Strack v Commission*, C-127/13 (hereafter '*Guido Strack v Commission*'), EU:C:2014:2250, paragraphs 26-28.

<sup>3</sup> *Guido Strack v Commission*, cited above, paragraph 27.