



EUROPEAN COMMISSION

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

Director-General

Brussels,
GROW C4/SPR/cds(2021)

Ms Kamila Sotomska
Union of Entrepreneurs and
Employers
Nowy Świat 33 street
00-029 Warsaw
Poland

Sent by email only to:
[ask+request-8753-
707f3d3d@asktheeu.org](mailto:ask+request-8753-707f3d3d@asktheeu.org)

Subject: Request for access to documents – GESTDEM No. 2020/6882

Dear Ms Sotomska,

Thank you for your e-mail of 12 November 2020 which was registered at the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs of the European Commission on 12 November, 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).

1. SCOPE OF YOUR REQUEST

Your e-mail requested access to documents as follows:

- *“all documents (correspondence, emails, messages, position papers, memos, presentations, agendas, minutes, reports, test results, notes, pictures, videos, recording, websites etc.) sent to or from the Automotive and Mobility Industries unit of DG GROW (GROW.DDG1.C.4) and any assigned staff; and*
- *all meetings (conferences, phone calls, conference calls etc.) held between the Automotive and Mobility Industries unit of DG GROW (GROW.DDG1.C.4), including any staff assigned, and any other party (European institutions and agencies, international institutions, type approval authorities, research institutes, consumer organizations, NGOs, lobby organizations, private companies etc.)*

where child restraints systems were discussed since 01.09.2019, especially but not limited to Smart Kid Belt.”

As your e-mail did not specify an end date for the time scope, we have considered documents with a date up to and including 12 November 2020.

Following our request for clarification sent on 13 November 2020, you replied on 30 November, stating the following:

“Regarding the meetings, I would like to request a list of these meetings as well as any documents which resulted thereof to include agendas, minutes, notes etc.”.

2. INFORMATION ON MEETINGS

We have identified three meetings falling under the scope of your request. The list of these meetings is in annex.

3. DESCRIPTION OF DOCUMENTS IDENTIFIED

We have identified 158 documents falling under the scope of your request (including three documents linked to meetings). The list of these documents is in annex.

4. NON-DISCLOSURE OF THE DOCUMENTS

Following an examination of the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I would like to inform you that access to the documents cannot be granted, as disclosure is prevented by exception to the right of access laid down in Article 4(2), third indent of this Regulation ("The institutions shall refuse access to a document where disclosure would undermine the protection of [...] - the purpose of inspections, investigations and audits").

The documents are all connected to a procedure of compliance verification by the European Commission under Article 9 of the *Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles*.

In the context of its market surveillance activities, the Commission is empowered to organise and carry out tests and inspections to verify that vehicles, systems, components and separate technical units placed on the internal market comply with the relevant requirements.

Where, following the compliance verification tests, the Commission establishes that vehicles, systems, components or separate technical units do not comply with the type-approval requirements laid down in the Regulation or that the vehicles, systems, components or separate technical unit do not comply with the type-approval or that the type-approval has been granted on the basis of incorrect data, it shall initiate the procedure provided for in Articles 53 or 54 of Regulation (EU) 2018/858.

According to the procedure under Article 54(5), the Commission consults the type-approval authority that granted the approval of the non-compliant product, the authorities of the other MS and the economic operator and may decide on the refusal of recognition of the type-approval at Union level by adopting an implementing act, which has to be implemented by the Member States.

Disclosure of the documents at this stage would undermine the protection of the investigation in question, as it would put in the public domain ongoing exchanges;

disclosure of which at this point in time would unduly interfere with the procedure and may undermine the rights of the entities concerned.

According to Regulation (EC) No 1049/2001, an exception to the right of access must be waived if there is an overriding public interest in disclosing the document concerned, which outweighs the interest protected by the exception to the right of access. In this case the Commission has reached the conclusion that there appears to be no overriding public interest in their disclosure in the sense of the Regulation.

The possibility of granting partial access in accordance with Article 4(6) of Regulation (EC) No 1049/2001 has also been examined. However, this is not considered possible since the documents in question are covered in their entirety by the above-mentioned exception.

5. MEANS OF REDRESS

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

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
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles,
or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

(e-signed)
Kerstin Jorna

Annexes: Document register
List of meetings