



EUROPEAN COMMISSION
JOINT RESEARCH CENTRE

The Director-General

Brussels,
JRC/SQ/Ares (2020)

Sent via e-mail only to¹:

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

Dear Ms Sotomska,

Subject: Your application for access to documents – Ref.: GestDem No 2020/6904

We refer to your e-mail dated 11/11/2020 in which you make a request for access to documents, registered on 12/11/2020 under the above-mentioned reference number.

You request access to:

- all test results;
- all documents (correspondence, emails, messages, position papers, memos, presentations, agendas, minutes, reports, notes, pictures, videos, recording, websites etc.) sent to or from the Joint Research Centre and any assigned staff;

and:

- all meetings (phone calls, conference calls etc.) held between the Joint Research Centre, including any staff assigned, and any other party (including but not limited to lobby organizations, European institutions, international institutions, research institutes, type approval authorities, consumer organizations, NGOs etc.)

where Smart Kid Belt has been mentioned.

I consider your request to cover documents held up to the date of your initial application, i.e. 11/11/2020.

Please note that the wide scope of your request covers also areas falling under the responsibility of DG GROW. Furthermore, DG GROW received a similar request that was registered under GestDem 2020/6882. This reply relates only to the documents held by DG JRC under GestDem 2020/6904. You will receive the reply from DG GROW in due course.

¹ According to standard operational procedure, the reply is usually also sent to you by registered post. Please note, however, that due to the extraordinary health and security measures currently in force during the COVID-19 epidemics, which includes the requirement for all Commission non-critical staff to telework, we are unfortunately not in a position to follow this procedure until further notice. We would therefore appreciate if you could confirm receipt of the present e-mail.

Your application concerns the following documents held by the JRC:

Date of document	Reference Number	Sender	Addressee	Subject
10.06.2020	Ares(2020)3217091	European Commission, DG GROW, JRC	5th Forum meeting, 10 June 2020	Uniform interpretation on the approval of Child Restraint Systems under UN Reg. 44(issue of approval of a “guide strap” as CRS)
03.07.2020	Ares(2020)7541270	European Commission, DG JRC	European Commission, DG GROW	Preliminary ResultsCompliance Verification of a child restraint system:Smart Kid Belt
10.11.2020	Ares(2020)7541366	European Commission, DG JRC	6th Forum meeting, 10 November 2020	JRC Market Surveillance TestingNon-Compliance of a speedometer (R39) and a child restraint system (R44)
13.11.2020	Ares(2020)7541901	European Commission, DG JRC	ICSMS upload	Report and compliance assessment
13.11.2020	Ares(2020)7542136	European Commission, DG JRC	ICSMS upload	Report and compliance assessment of different configuration set up
20.09.2020	Ares(2020)7542278	European Commission, DG JRC	European Commission, DG JRC	Laboratory documentation with raw data
02.12.2020	Ares(2020)7542368	European Commission, DG JRC	European Commission, DG JRC	Laboratory documentation with raw data

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 have 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.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this 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 Brussels
Belgium

or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

E-signed

Stephen QUEST