



## EUROPEAN COMMISSION

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

Director-General

Brussels,  
GROW C4/SPR/cds(2021)

Mr Krzysztof Markowski  
Smart Kid S.A.  
ul. Warszawska 976  
05-083 Borzęcin Mały  
Poland

***Sent by email only to:***

[ask+request-9023-  
e5c2c224@asktheeu.org](mailto:ask+request-9023-e5c2c224@asktheeu.org)

**Subject: Request for access to documents – GESTDEM No. 2021/4619**

Dear Mr Markowski,

Thank you for your e-mail of 19 July 2021 which was registered at the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs of the European Commission on the same day, 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:

- *any 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 from 01.01.2018 where Smart Kid company or Smart Kid Belt as a product has been mentioned.*

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 19 July 2021.

### **2. DESCRIPTION OF DOCUMENTS IDENTIFIED**

We have identified 210 documents falling under the scope of your request. The list of these documents is in annex.

### 3. 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.

#### **4. 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](mailto:sg-acc-doc@ec.europa.eu)

Yours faithfully,

Kerstin Jorna

Annexes: Document register