



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND
CAPITAL MARKETS UNION

Director-General

Brussels,
fisma.d.2(2022)1605295

Mr Maximilian Henning
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28005 Madrid
SPAIN

ask+request-10704-23df69dd@asktheeu.org

**Subject: Your applications for access to documents – GESTDEM 2022/0753
Cyprus, 2022/0754 Denmark, 2022/0755 Hungary, 2022/0756 Italy and
2022/0757 Lithuania**

Dear Mr Henning,

I refer to your requests for access to documents, registered on 4 February 2022 under the above mentioned reference numbers, in which you ask for documents related to the state of transposition of the Anti-money laundering directives IV and V by Cyprus, Denmark, Hungary, Italy and Lithuania, especially those concerning the EU's assessments of these transpositions and any potential reaction taken to it, including discussions of potential or actual infringement procedures.

The Commission services have identified the documents listed in the annex.

Following an examination of these documents under the provision of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, I regret to inform you that the access to these cannot be granted. The disclosure is prevented by an exception to the right of access laid down in Article 4 of this Regulation which states that *"(t)he institutions shall refuse access to a document where disclosure would undermine the protection of [...] the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure."*

The decision not to grant access to the documents requested is based on the negative effects that the disclosure would have on the conduct of investigations by the Commission in the framework of the assessment of the implementation and effective application of the 4th and 5th Anti-Money Laundering Directive in the Member States which are closely interlinked. At the current status of investigations, the disclosure would undermine the protection of investigations aims. We consider that the disclosure of the document would affect the climate of mutual trust between the authorities of the Member State concerned and the

Commission. Therefore, the exception laid down in Article 4(2) third indent of Regulation (EC) No 1049/2001 applies to the documents requested in your application.

The approach to protect the conduct of the investigations within the infringement proceedings has been notably confirmed in the *Petrie* judgment¹:

"68. (...) the Member States are entitled to expect the Commission to guarantee confidentiality during investigations which might lead to an infringement procedure. This requirement of confidentiality remains even after the matter has been brought before the Court of Justice, on the ground that it cannot be ruled out that the discussions between the Commission and the Member State in question regarding the latter's voluntary compliance with the Treaty requirements may continue during the court proceedings and up to the delivery of the judgment of the Court of Justice. "

We have also considered whether partial access could be granted to the documents requested. However, we consider that the entire documents are covered by this exception, which applies unless there is an overriding public interest in disclosure of the documents. In this case, from your application, we cannot identify any overriding public interest in the disclosure in relation to the protection of the purpose of investigations.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review the position taken in relation to your request. 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
Secretary-General
Transparency unit SG-B- 4
BERL 5/327
B- 1049 Bruxelles/Brussel

or by e-mail to:

sg-acc-doc@ec.europa.eu

Yours sincerely,

Electronically signed

John BERRIGAN

¹Case T-191/99, judgment of 11 December 2001, [2001] ECR I-3677.