



EUROPEAN COMMISSION

Competition DG

The Director General

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COMP/03/KvC - 2016/035857

Gabriel Syme  
4b Kilvert's Steps,  
Bear Street, Hay-on-Wye  
Hereford HR3 5AG  
United Kingdom

[ask+request-2756-10784034@asktheeu.org](mailto:ask+request-2756-10784034@asktheeu.org)

**Subject: Your application for access to documents – Ref GestDem 2016/1671**

Dear Sir,

I refer to your e-mail dated 5 April 2016, registered on 5 April 2016 under GESTDEM number 2016/1671, requesting access to document under Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

Your application concerns access to documents regarding the application of the State aid rules in the United Kingdom

- after the EU membership referendum but prior to the UK giving notice under Article 50(2) of the TEU;
- for the period between the UK giving notice under Article 50(2) of the TEU and the date by which, following negotiation, the application of the treaties ceases in respect of the UK under Article 50(3);
- for the period after the UK has left the EU but prior to any trade deal(s) being agreed to allow the UK's businesses to access the European Union's common market; and
- for the period once the UK has agreed trade deal(s) allowing the UK's businesses to access the European Union's common market.

Your application also concerns access to documents which clarify whether Council Regulation (EU) 2015/1589 (state aid procedural regulation) would cease to apply to existing UK awards of state aid once the application of the EU treaties to the UK ends under Article 50(3) of the TEU

I regret to inform you that no such documents exist with DG Competition or other Commission services. As specified in Article 2(3) of Regulation 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution. The Commission is therefore unable to satisfy your application.

In accordance with Article 7(2) of Regulation 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  
Secretary-General  
Transparency unit SG-B-4  
BERL 5/282  
B-1049 Bruxelles

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

You also asked whether the Commission is aware of any award(s) of state aid which have been found to be unlawful because they have breached the terms of the GBER.

In line with Article 108(1) TFEU, the Commission monitors the correct implementation of existing schemes. To this end, DG Competition chooses every year a sample of schemes (including block exempted schemes) and examines in detail how they are applied in practice. Irregularities are detected in approximately one third of the cases. It must be stressed in this context that finding an irregularity does not necessarily mean that incompatible aid was granted in practice: the irregularity is sometimes only procedural or, despite the irregularity, the measure can be found compatible on another basis (e.g. as de minimis support). Following examples of issues encountered in the context of monitoring can be given: illegal modification or prolongation of a scheme without appropriately informing the Commission (cf. Article 11 of the 2014 GBER and Article 9 of the 2008 GBER), insufficient controls at national level to check compliance with general compatibility conditions such as the exclusion of companies in difficulty from aid under the GBER (cf. Article 1.4.c of the 2014 GBER and Article 1.6.c of the 2008 GBER), incorrect transcription in the legal basis or implementation in practice of the incentive effect condition (cf. Article 6 of the 2014 GBER and Article 8 of the 2008 GBER).

The Commission follows-up with the Member States the issues encountered to ensure that any competition distortion that might have resulted is addressed and that problems are prevented for the future.

Yours faithfully,

  
Johannes LAITENBERGER