



EUROPEAN COMMISSION  
BUDGET

The Director-General

Brussels  
BUDG.D.1/KS

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**Subject: Your application for access to documents – GESTDEM 2022/2509**

Dear Mr De Geyter,

We refer to your e-mail dated 3 May 2022 in which you make a request for access to documents, registered on the same date under the above-mentioned reference number.

You request access to the written notification to Hungary pursuant to Article 6(1) of Regulation (EU, Euratom) 2020/2092 ('notification').

Having examined the document requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that your application cannot be granted, as disclosure is prevented by exception to the right of access laid down in Article 4 of this Regulation.

The first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 provides that 'access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.'

The document you seek to obtain relates to an ongoing procedure that may lead to further procedural steps, which have not yet been taken by the Commission, and to a decision by the Council. The notification is part of the Commission file for a case under the Regulation 2020/2092 on a general regime of conditionality for the protection of the Union budget<sup>1</sup> ('Conditionality Regulation'). The procedure under Article 6 of the Conditionality Regulation constitutes a bilateral process between the Commission and

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<sup>1</sup> OJ L 433I, 22.12.2020, p. 1.

the Member State concerned, with a view to enabling the Commission to thoroughly assess all relevant information, the Member State's observations and possible proposal of remedial measures, with a view to determine whether appropriate measures should be proposed for adoption by the Council. The notification that was sent to Hungary on 27 April 2022 is only the initial step of the procedure.

Disclosure of the document requested would undermine the protection of the decision-making process of the Commission (and, in the final stage of the procedure, of the Council) in relation to the abovementioned case, as it would reveal preliminary views of the Commission while the procedure is ongoing, indeed only in its initial step. Therefore, the exception laid down in Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001 applies to this document.

Additionally, the confidentiality of this process is necessary to safeguard the positions of the Member State concerned. The Commission is under the obligation to fully protect the rights of defence of the Member State concerned by a procedure under the Conditionality Regulation, and the discussion with that Member State should be conducted in a climate of mutual trust which could be affected by the public disclosure of such information. Hence, the Commission cannot disclose to the public any details in relation to the written notification, as this would compromise the Commission's duty of sincere cooperation with the Member State concerned.

Furthermore, the fourth indent of Article 4(1)(a) of Regulation (EC) No 1049/2001 provides that the institutions shall refuse access to a document where disclosure would undermine the protection of 'the financial, monetary or economic policy of the Community or a Member State'. As the main aim of the procedure set out by the Conditionality Regulation is to protect the Union budget, the exception laid down in Article 4(1)(a) applies to this document.

Moreover, the second and third indents of Article 4(2) of Regulation (EC) No 1049/2001 provide that the institutions shall refuse access to a document where disclosure would undermine the protection of 'court proceedings and legal advice' and 'the purpose of inspections, investigations and audits'. The Commission considers that the disclosure of the document to the public would undermine the protection of court proceedings, as there is a reasonable likelihood that such proceedings would be initiated if the Council adopts measures by decision. Additionally, the procedure involves conducting an investigation by the Commission, whose purpose could indeed be undermined by the disclosure of the document to the public.

We have considered whether partial access could be granted to the document requested. However, partial access could not be granted as the document is covered by the abovementioned exception in its entirety, and after expunging the confidential information, the document would be meaningless.

The exception laid down in Article 4(3) of Regulation (EC) No 1049/2001 applies unless there is an overriding public interest in disclosure of the document. We have examined whether there could be an overriding public interest in disclosure of this document, however, we were not able to identify such interest. Furthermore, we would like to note that you have not referred to any such overriding public interest in your application.

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 Bruxelles

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

Yours sincerely,

*Electronically signed*

Gert Jan KOOPMAN

