

EUROPEAN COMMISSION
Directorate General for Mobility and Transport
The Director-General

29 AVR. 2016

Brussels,
MOVE A5/AMG/mp/move.a.5(2016)2464469

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Subject: Your request for access to documents – Ref. GestDem No 2016/2111

Dear Mrs. Catarino,

We refer to your request for access to documents dated 04/04/2016 under the above mentioned reference number.

Your application concerns the following documents:

- 1) Copy of the EU Pilot Ref. 7872/15 - "Regulamento (CE) n.º 1370/2007 – Metro do Porto" request for information sent by DG MOVE to the Portuguese State.
- 2) Copy of the information sent by the Portuguese State to DG MOVE in answer to the EU Pilot Ref. 7872/15 - "Regulamento (CE) n.º 1370/2007 – Metro do Porto".
- 3) Copy of the analysis and report produced by the DG MOVE technicians regarding the information given by the Portuguese State in answer to the EU Pilot Ref. 7872/15 - "Regulamento (CE) n.º 1370/2007 – Metro do Porto".
- 4) Copy of the decision made by DG MOVE regarding the EU Pilot Ref. 7872/15 - "Regulamento (CE) n.º 1370/2007 – Metro do Porto".

Having examined the documents 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 (2) third indent of this Regulation:

"The institutions shall refuse access to a document where disclosure would undermine the protection of:

— commercial interests of a natural or legal person, including intellectual property,

— court proceedings and legal advice,
— the purpose of inspections, investigations and audits,
unless there is an overriding public interest in disclosure".

The documents which you seek to obtain relate to an ongoing investigation regarding a possible infringement of EU law (*EU Pilot procedure 7872/2015*).

The General Court has acknowledged the existence of general presumption of confidentiality as regards the documents relating to an 'EU Pilot' procedure¹.

The complete or partial disclosure of the documents requested would undermine the protection of the purpose of the ongoing investigation. The disclosure of the documents at this point in time would affect the climate of mutual trust between the authorities of the Member State and the Commission, which is required to enable them to resolve the case without having to refer it to the Court of Justice.

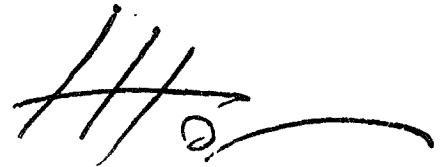
The exceptions laid down in Article 4(2) and 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. The Commission has examined this question and does not see any overriding public interest in disclosing the documents.

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-5
BERL 5/327
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Henrik HOLOLEI

¹ Judgment in *ClientEarth / Commission*, C-612/13 P, ECLI:EU:C:2015:486, paragraph 65 and judgment of 25 September 2014 in *Spirlea v Commission*, T-306/12, ECR, currently under appeal, EU:T:2014:816, paragraph 63.