



## EUROPEAN COMMISSION

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

The Director-General

Brussels  
GROW.I.2/SP

Mr Peter Teffer  
Ekko Voorkamer  
Bemuurde Weerd WZ 3  
3513 BH Utrecht  
The Netherlands

*Sent by email only to:*

[ask+request-9558-  
1f48723c@asktheeu.org](mailto:ask+request-9558-1f48723c@asktheeu.org)

### **Subject: Request for access to documents – GestDem No. 2021/3432 – Third reply**

Dear Mr Teffer,

Referring to the letters of 16 July (first reply) and 22 July (first follow-up reply), in which you were informed that you were receiving a partial reply to your access to documents request GestDem No. 2021/3432, I would now like to provide you with a second follow-up reply.

#### **1. NON-DISCLOSURE OF THE REQUESTED DOCUMENTS**

With the first reply, six documents were disclosed out of the 26 documents identified. With the first follow-up reply, a further 18 documents were disclosed. For the following two documents, consultations with the Member States were still ongoing at the time the first follow-up reply was sent:

<b>Title of document</b>	<b>Type of document</b>	<b>Date of document</b>	<b>Reference Number</b>	<b>Sender/ Entity concerned</b>	<b>Addressee</b>	<b>Attachment(s)</b>
ECJ ruling and Commission review request	E-mail	04.03.2021	Ares(2021)4264687	Ireland	European Commission, DG GROW, Director Gwenole Cozigou	ECJ Ruling - letter to COM for guidance from e1 – KBA, e2 – France, e3 – Italy, e4 – RDW, e5 – STA, e9 – Spain, e13 –

						SNCH, e24 – NSAI
FW: ECJ ruling and Commission review request	E-mail	10.03.2021	Ares(2021)4264687	Ireland	European Commission, DG GROW, Director Gwenole Cozigou	ECJ Ruling - letter to COM for guidance from e1 - KBA, e2 - France, e3 - Italy, e4 - RDW, e5 - STA, e8 - Czech Republic, e9 - Spain, e13 - SNCH, e24 - NSAI

Consultations of Member States have now been completed. The documents were sent as attachments to e-mails originating from one Member State, but the Commission has consulted all the Member States that are signatories of the two letters.

Following an examination of the documents under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents and taking into account the opinion of the third parties, 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(3), second subparagraph of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, according to which access shall be refused if the "if disclosure of the document would seriously undermine the institution's decision-making process".

One of the signatories of the documents has objected to disclosure of the documents and has motivated their position as follows:

*"The documents concerned are letters sent by several Member State type-approval authorities to the European Commission. They set out the position of Germany and the other type-approval authorities involved in the follow-up to the judgment of the European Court of Justice in Case C-693/18 and indicate that — in the opinion of the authorities involved — divergences could exist with regard to the legal opinion of the European Commission. The differing understanding of the scope of the testing carried out by the Member State type-approval authorities and of the interpretation of Article 5 (2) of Regulation (EC) No 715/2007 should be highlighted. Since the legal opinion of the European Commission has not yet been formally communicated, Germany takes the view that the facts of the case are still undecided and open.*

*It is to be feared that prior publication of the points raised in the documents concerned could lead to an attempt to influence the decision-making process of the competent bodies of the European Commission. If such a situation were to occur, Germany regards the protection of an unbiased and free exchange of views as potentially endangered in order to ensure effective, functional and neutral decision-making on the substance. So*

*long as there is no conclusive opinion and position, which can be inferred from the official statement of the European Commission which has not yet been made, we consider that the conditions laid down in Article 4(3) of Regulation (EC) No 1049/2001 are met."*

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.

## **2. MEANS OF REDRESS**

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 Secretariat-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,

(e-signed)  
Kerstin Jorna