



EUROPEAN COMMISSION
JOINT RESEARCH CENTRE

The Director-General

Brussels
JRC/SQ/ARES (2021)

Sent via e-mail only to¹ :
Mr Krzysztof Markowski
Smart Kid S.A.
ul. Warszawska 976
05-083 Borzęcin Mały
Poland

Subject: Your application for access to documents – Ref.: GestDem No 2021/1094

Dear Mr Markowski,

We refer to your e-mails from 8 and 25 February 2021 in which you make a request for access to documents, registered on 26 February 2021 under the above-mentioned reference number.

You request access to any documents where Smart Kid company has been mentioned.

I consider your request to cover documents held up to the date of your initial application, i.e. 8 February 2021.

We note that you have sent a similar request to to DG GROW, registered under GestDem 2021/0600. This reply relates only to the documents held by DG JRC under GestDem 2021/1094. You will receive the reply from DG GROW in due course.

Your application concerns the following documents held by the JRC:

1. JRC presentation in the 5th meeting of the Forum for Exchange of Information on Enforcement, 10 June 2020, Ares(2020)3217091;
2. JRC presentation on preliminary results to GD GROW, 3 July 2020, Ares(2020)7541270;

¹ According to standard operational procedure, the reply is usually also sent to you by registered post. Please note, however, that due to the extraordinary health and security measures currently in force during the COVID-19 epidemics, which includes the requirement for all Commission non-critical staff to telework, we are unfortunately not in a position to follow this procedure until further notice. We would therefore appreciate if you could confirm receipt of the present e-mail.

3. JRC presentation at the 6th meeting of the Forum for Exchange of Information on Enforcement, 10 November 2020, Ares(2020)7541366;
4. JRC Report and compliance assessment, 13 November 2020, Ares(2020)7541901;
5. JRC Report and compliance assessment of different configuration set up, 13 November 2020, Ares(2020)7542136
6. JRC Laboratory note, 20 September 2020, Ares(2020)7542278;
7. JRC Laboratory note, 2 December 2020, Ares(2020)7542368.

Following an examination of the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I would like to inform you that access to the documents 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 [...] - the purpose of inspections, investigations and audits*").

The documents are all connected to a procedure of compliance verification by the European Commission under Article 9 of the Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles.

In the context of its market surveillance activities, the Commission is empowered to organise and carry out tests and inspections to verify that vehicles, systems, components and separate technical units placed on the internal market comply with the relevant requirements.

Where, following the compliance verification tests, the Commission establishes that vehicles, systems, components or separate technical units do not comply with the type-approval requirements laid down in the Regulation or that the vehicles, systems, components or separate technical unit do not comply with the type-approval or that the type-approval has been granted on the basis of incorrect data, it shall initiate the procedure provided for in Articles 53 or 54 of Regulation (EU) 2018/858.

According to the procedure under Article 54(5) of the Regulation, the Commission consults the type-approval authority that granted the approval of the non-compliant product, the authorities of the other MS and the economic operator and may decide on the refusal of recognition of the type-approval at Union level by adopting an implementing act, which have to be implemented by the Member States.

Disclosure of the documents at this stage would undermine the protection of the investigation in question, as it would put in the public domain ongoing exchanges; disclosure of which at this point in time would unduly interfere with the procedure and may undermine the rights of the entities concerned.

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.

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 Brussels
Belgium

or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

E-signed

Stephen QUEST