




**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL FOR EMPLOYMENT, SOCIAL AFFAIRS AND INCLUSION

The Director-General

Brussels  
EMPL.D.3/DD/ba/(2021)6019729



*Advance copy by email*  
 [@fragenstaat.de](mailto:fragenstaat.de)

**Subject: Your application for access to documents –**  
**Ref: GestDem No 2021/4909**

Dear Sir,

I refer to your email dated 5 August 2021, registered on 6 August 2021 under the above mentioned reference number, in which you make a request for access to documents.

You request access to the letter of formal notice to Poland of 15 July 2021 according to Article 258 TFEU regarding INFR (2021)2115, and any further communication in that case.

I consider your request to cover documents held up to the date of your initial application, i.e. 5 August 2021.

Your application concerns the following document:

- letter of formal notice addressed by the Commission to Poland on 15 July 2021 regarding INFR (2021) 2115 (C(2021)5221).

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 documents which you seek to obtain relate to an ongoing investigation regarding a possible infringement of EU law (INFR (2021) 2115).

Disclosure of the documents requested would undermine the protection of the purpose of the ongoing investigation; indeed, 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. Therefore the exception laid down in Article 4(2) third indent of Regulation (EC) No 1049/2001 applies to this document.<sup>1</sup>

That provision stipulates that the 'institutions shall refuse access to a document where disclosure would undermine the protection of [...] the purpose of inspections, investigations and audits'.

Having regard to the above, I consider that access to the documents requested must be refused on the basis of the exception under Article 4(2), third indent of Regulation 1049/2001 on the grounds of protecting the purpose of ongoing investigations.

The exception laid down in the aforementioned article applies unless there is an overriding public interest in disclosure of the documents.

In your request, you do not put forward any reasoning pointing to an overriding public interest in disclosing the documents requested.

Based on the elements at my disposal, it was not possible to establish the existence of any overriding public interest in disclosure of the documents in question. In any case, I consider that the public interest is better served in this case by ensuring the conclusion, in all serenity, of the procedure and the related exchanges with the Member State, without jeopardising the dialogue between the European Commission and the Member State for which, as pointed out above, a climate of trust is essential.

In consequence, I consider that in this case there is no overriding public interest that would outweigh the public interest in safeguarding the protection of the purpose of investigations protected by Article 4(2), third indent of Regulation 1049/2001.

I have also examined the possibility of granting partial access to the documents concerned, in accordance with Article 4(6) of Regulation 1049/2001. However, it follows from the assessment made above that the documents which fall within the scope of your request are manifestly and entirely covered by the exception laid down in Article 4(2), third indent of Regulation 1049/2001.

It must also be underlined that the Court of Justice confirmed that a presumption of non-disclosure excludes the possibility to grant partial access to the file<sup>2</sup>.

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:

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<sup>1</sup> See, in this regard by analogy, CJEU judgment of 14 November 2013, *Liga para a Protecção da Natureza and Finland v Commission*, Cases C-514/11 P and C-605/11 P, EU:C:2013:738, paragraphs 55, 65-68; CJEU judgment of 11 December 2001, *Petrie and Others v Commission*, T-191/99, EU:T:2001:284, paragraph 68.

<sup>2</sup> CJEU judgment of 25 March 2015, *Sea Handling v Commission*, T-456/13, EU:T:2015:185, paragraph 93.

European Commission  
Secretariat-General  
Transparency, Document Management & Access to Documents (SG.C.1)  
BERL 7/076  
B-1049 Brussels

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

Yours faithfully,

