

EUROPEAN COMMISSION
Secretariat-General
The Secretary General

Brussels, 13.05.2015
SG.B4/MF/rc - sg.dsg2.b.4(2015)1703878

Mr Patrick Breyer

By e-mail only:



**Subject: New confirmatory decision on application GESTDEM 2011/1748
following the judgment of the General Court in case T-188/12**

Dear Mr Breyer,

On 13 July 2011 you lodged a confirmatory application for access to documents, in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹ (hereafter: Regulation 1049/2001).

With that confirmatory application, you requested a review of the position taken by the Director-General for Home Affairs (hereafter DG HOME) on 11 July 2011, in its reply to your initial application dated 30 April 2011.

In your confirmatory application, you requested access *inter alia* to:

- all documents related to the case C-189/09² before the European Court of Justice against Austria;
- all other documents relating to the transposition or non-transposition of directive 2006/24/EC by Austria including infringement proceedings against Austria for not transposing directive 2006/24/EC.³

¹ Official Journal L145, 31.05.2001, p. 43.

² Case C-189/09, European Commission v Austria.

³ Your request also covered documents relating to the transposition or non-transposition of directive 2006/24/EC by Germany, including infringement proceedings against Germany for not transposing directive 2006/24/EC. The Commission replied to the corresponding part of your request by means of two separate confirmatory decisions, dated 5 October 2011 and 12 December 2011.

The Commission sent you its confirmatory decision on 3 April 2012⁴. As regards the pleadings lodged by Austria to the Court in case C-189/09, the Commission took the view that these documents, which had been submitted to the Court by Austria, and of which the Commission had only received a copy as a party in the proceedings, did not fall within the scope of Regulation 1049/2001.

In its judgment of 27 February 2015 in Case T-188/12, the General Court annulled the Commission's confirmatory decision of 3 April 2012 insofar as it refused access to the pleadings of Austria. It held that the Commission, in considering that those pleadings did not fall under the scope of Regulation 1049/2001, had misinterpreted Article 2(3) of the Regulation.

Through the adoption of this new confirmatory decision, the Commission gives effect to the judgment of the General Court of 27 February 2015 in respect of your application.

2. SCOPE OF THIS DECISION

The Commission has identified the following documents as falling under the scope of your request:

- Statement of Defence of the Republic of Austria pursuant to Article 4 of the Rules of Procedure of the Court of Justice of the European Union in case C-189/09 (including annexes) - dated 4 September 2009;
- Rejoinder of the Republic of Austria pursuant to Article 4, paragraph 1 of the Rules of Procedure of the Court of Justice of the European Union in case C-189/09 – dated 11 January 2010.

3. EXAMINATION AND CONCLUSIONS

This new confirmatory decision is based on a re-assessment of your confirmatory request of 13 July 2011 in light of the judgment of the General Court of 27 February 2015, taking into account the current factual and legal circumstances.

As part of its re-assessment, the Commission has consulted the Austrian authorities, pursuant to Article 4(4) and 4(5) of Regulation 1049/2001, on the possible release of the documents requested, which originate from the latter authorities.

In response to this consultation, the Austrian authorities indicated, by e-mail of 1 April 2015, that they do not have any objections against the release of the documents.

Taking into account the position expressed by the Austrian authorities and the judgement of the General Court in case T-188/12 mentioned above, I am pleased to inform you that full access is granted to the documents requested.

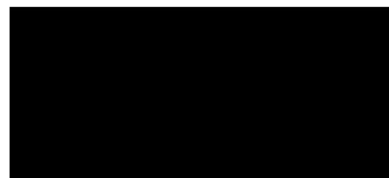
Please find a copy annexed.

⁴ The respective *Gestdem* reference of that decision was 2011/1748.

Please note that these documents were received by the Commission from the Austrian authorities. They do not reflect the position of the Commission and cannot be quoted as such.

The transmission of the requested documents is made without prejudice to a possible appeal of the Commission against the abovementioned judgment of the General Court of 27 February 2015.

Yours sincerely,



Catherine Day

Enclosures: Documents to which access is granted