



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT

The Director-General

Brussels, 19. 08. 2015
ENV.D.3/PO/ip/Ares(2015)

Csaba Kiss
Justice and Environment
Udolni 33
CZ - 602 00Brno

By registered mail with A/R

Advanced mail:
info@justiceandenvironment.org

Subject: Your application for access to documents – Ref. GestDem No 2015/4284

We refer to your request for access to documents sent on 7 August 2015, registered under reference number 2015/4284 concerning the infringement of EU Air Quality legislation.

You request access to the following documents:

1. the Letter of Formal Notice of 16 July 2010, sent by the Commission to the Czech Republic;
2. the answer of the Czech Republic on the Letter of Formal Notice, if existing; and
3. the Additional Letter of Formal Notice of 22 February 2013, sent by the Commission to the Czech Republic
4. the Reasoned Opinion of 27 March 2015, sent by the Commission to the Czech Republic;

Your application concerns documents regarding infringement procedure 2008/2186 against the Czech Republic concerning the bad application of Directive 2008/50/EC of 21 May 2008 on ambient air quality and cleaner air for Europe with respect to PM₁₀ limit values.

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 as the documents requested are related to an on-going infringement procedure, they are covered by one of the exceptions provided for by the policy relating to access to documents and that it cannot be made available to you.

The exception which applies to the documents you requested is that under Article 4(2) of Regulation 1049/2001 which lays down that the institutions shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.

In the matter of investigations of alleged infringements, sincere co-operation and a climate of mutual confidence between the Commission and the Member State concerned are required to allow both parties to engage in a process of negotiation and compromise with the search for a settlement of a dispute without bringing it before the Court of Justice of the European Union. The safeguarding of this objective warrants the refusal of access to the documents you requested.

This has been confirmed by the jurisprudence of the Court of First Instance. In its judgement of 11 December 2001 in the case T-191/99 the Court held that "*the Member States are entitled to expect the Commission to guarantee confidentiality during investigations which might lead to an infringement procedure. This requirement of confidentiality remains even after the matter has been brought before the Court of Justice, on the ground that it cannot be ruled out that the discussions between the Commission and the Member State in question regarding the latter's voluntary compliance with the Treaty requirements may continue during the court proceedings and up to the delivery of the judgement of the Court of Justice. The preservation of that objective, namely an amicable resolution of the dispute between the Commission and the Member State concerned before the Court of Justice has delivered judgment, justifies refusal of access to the letters of formal notice and reasoned opinions drawn up in connection with the Article 226 EC proceedings on the ground of protection of the public interest relating to inspections, investigations and court proceedings*".

In addition, in its judgement of 14 November 2013 in joint cases C-514/11 P and C-605/11 P (paragraph 63), the Court held that: "*the disclosure of the documents concerning an infringement procedure during its pre-litigation stage would, in addition, be likely to change the nature and progress of that procedure, given that, in those circumstances, it could prove even more difficult to begin a process of negotiation and to reach an agreement between the Commission and the Member State concerned putting an end to the infringement alleged, in order to enable European Union law to be respected and to avoid legal proceedings*".

Having carefully examined your request in the light of Article 4(2) of Regulation 1049/2001, I have been unable to identify in this particular case the existence of an overriding public interest which could justify the disclosure of the requested documents.

I have also examined the possibility of granting partial access to the requested documents, in accordance with Article 4(6) of Regulation 1049/2001. However, partial access is not possible considering that the document concerned is at the stage of investigation proceedings covered in its entirety by the exception under Article 4(2), third indent.

I can inform you that that the Czech Republic replied to the Commission to the reasoned opinion in due time, but for the same reasons as listed above the Czech Republic's answer cannot be disclosed.

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
Secretary-General
Transparency unit SG-B-4
BERL 5/327
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,


Karl Falkenberg