



Press and Information

Court of Justice of the European Union

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Judgment in Case C-139/07 P
Commission v Technische Glaswerke Ilmenau

Refusal of access to documents concerning a procedure for reviewing State aid may be justified by the general presumption that the disclosure of those documents would undermine investigation activities

Such a presumption may arise from the fact that, apart from the State responsible for granting the aid, other interested parties do not have the right to consult those documents

The Treaty confers on any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, a right of access to documents of institutions, organs and bodies of the Union.

However, the Access to Documents Regulation¹ provides that institutions of the Union are to refuse access to a document where disclosure would risk undermining the protection of the purposes of inspections and investigations.

In December 1998, Germany notified the Commission of various measures designed to consolidate the financial position of Technische Glaswerke Ilmenau (TGI), including a partial waiver of payment and a bank loan.

By decision of 12 June 2001, the Commission held that the waiver of payment constituted State aid incompatible with the common market. The action for annulment of that decision brought by TGI was dismissed by the Union courts.

In July 2001, the Commission opened a second formal investigation procedure in relation to aid granted by Germany to TGI, particularly the bank loan.

In March 2002, TGI applied for access to all the documents in the Commission's files regarding State aid cases concerning TGI. By decision of 28 May 2002, the Commission rejected the request for access, on the ground that disclosure of those documents would be likely to undermine the protection of the purposes of inspections and investigations.

TGI brought an action before the Court of First Instance seeking annulment of that Commission decision.

By judgment of 14 December 2006², the Court of First Instance annulled the decision, accusing the Commission in particular of not examining in a concrete, individual manner the documents covered by the request for access.

The Commission appealed against that judgment to the Court of Justice.

In its judgment today, the Court of Justice points out, first, that the legislation of the Union is designed to confer on the public as wide a right of access as possible to documents of the institutions, but that that right of access is subject to certain limits based on reasons of public or private interest.

¹ European Parliament and Council Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

² Case [T-237/02](#) *Technische Glaswerke Ilmenau v Commission*.

In this case, the Commission had refused to communicate to TGI documents relating to procedures for reviewing State aid which had been granted to it, invoking the exception to the right of access based on protection of the purposes of inspections and investigations.

The Court of Justice confirms that the documents of which disclosure is sought do indeed fall within an activity of "investigation", within the meaning of the Access to Documents Regulation.

Next, the Court states that, in order to justify refusal of access to a document the disclosure of which has been requested, it is not sufficient, in principle, for that document to fall within an activity excepted by the regulation. The institution concerned must also supply explanations as to how access to that document could specifically and effectively undermine such an activity.

However, the Court recalls that it has already acknowledged in its case-law that it is, in principle, open to the Union institution concerned to base its decisions in that regard on general presumptions which apply to certain categories of documents, as considerations of a generally similar kind are likely to apply to requests for disclosure relating to documents of the same nature.

As regards procedures for reviewing State aid, such a general presumption may arise from the fact that those procedures are open solely vis-à-vis the Member State responsible for the granting of the aid.

Interested parties other than the Member State responsible for granting the aid do not have a right under those procedures to consult the documents on the Commission's administrative file.

Therefore, the Court of Justice concludes that the Court of First Instance erred in its interpretation of the regulation concerning access to documents by failing to recognise, in this case, the existence of a general presumption according to which disclosure of the documents on the administrative file would, in principle, undermine the protection of the purposes of inspections and investigations.

Therefore, the Court of Justice annuls the judgment of the Court of First Instance and, ruling on the dispute itself, dismisses the action for annulment brought by TGI before the Court of First Instance.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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