



EUROPEAN COMMISSION

Brussels, 21.5.2023
C(2023) 3431 final

Arun Dohle
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1017EG Amsterdam
The Netherlands

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION NO (EC) 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - EASE 2023/1127**

Dear Mr Dohle,

I refer to your email of 23 March 2023, registered on the same day, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter 'Regulation (EC) No 1049/2001').

1. SCOPE OF YOUR REQUEST

In your initial application of 18 February 2023, registered on 20 February 2023, you requested access to, I quote: ‘all correspondence received related to the subject of adoptions from Romania received by the European Commission in the period 2020 – now’, ‘[i]ncluding pdf printouts of the ARES registration and circulation sheets’.

The Directorate-General for Justice and Consumers (hereafter: ‘DG JUST’), the Commission department that handled your application at initial stage because the subject-matter of your request falls under the remit of this department’s activities, identified the following 10 documents as falling within the scope of your application:

- Lettre ouverte à Madame la Présidente de la Commission Européenne, 1.3. 2021, Ares(2021)1558651 (document 1),

¹ Official Journal L 345, 29.12.2001, p. 94.

² Official Journal L 145, 31.5.2001, p. 43.

- Demande de réponses concrètes sur les adoptions et la protection de l'enfance en Roumanie, 21.6.2021, Ares(2021)4082276 (document 2),
- Demande de réponses concrètes sur les adoptions et la protection de l'enfance en Roumanie, 7.10.2021, Ares(2021)6264106 (document 3),
- Cri d'alarme sur le trafic d'enfants et la corruption dans l'adoption internationale, 8.2.2023, Ares(2023)925588 (document 4),
- E-mail, 8.12.2022, Ares(2022)8528631 (document 5),
- Circulation sheet Ares(2021)1558651 (document 6),
- Circulation sheet Ares(2021)4082276 (document 7),
- Circulation sheet Ares(2021)6264106 (document 8),
- Circulation sheet Ares(2023)925588 (document 9),
- Circulation sheet Ares(2022)8528631 (document 10).

In its reply of 24 March 2023, DG JUST provided partial access to all ten above-mentioned documents, only with personal data redacted on the basis of the exception laid down in Article 4(1)(b) of Regulation (EC) No 1049/2001 (protection of the privacy and the integrity of the individual).

In your confirmatory application, you request a review of the initial reply and contend that '[t]he following documents are missing from the reply given by DG Justice:

- Letter from 16 Mars 2023: Objet : Réponse - Consultation au titre du règlement (CE) n° 1049/2001 – Demande d'accès aux documents (ADT 2023/1127) - Dossier enfants roumains
- The reply of 27 février 2023 related to « le cri d'alarme sur le trafic d'enfants et la corruption » adressé aux Responsables de l'Union Européenne.'

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a review of the reply given by the Directorate-General concerned at the initial stage.

As a preliminary remark, the Secretariat-General notes that the temporal scope of your application is the period 01 January 2020 – 20 February 2023 (i.e. the registration date of your application). It is strictly defined in your request submitted on 20 February 2023, whereby you indicate 'the period 2020 – now'. Furthermore, the Secretariat-General notes that your application solely concerns the 'correspondence (...) received by the European Commission'.

Against this background, the European Commission has carried out a renewed, thorough search for the documents requested. Following this renewed search, the Secretariat-General confirms that the Commission does not hold any other document that would correspond to the description given in your application, during the reference period mentioned therein.

As specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution. In this respect, your attention is drawn to the judgment of the Court of Justice in Case C-127/13 P (*Strack v European Commission*), according to which ‘[n]either Article 11 of Regulation 1049/2001 nor the obligation of assistance in Article 6(2) thereof, can oblige an institution to create a document for which it has been asked to grant access but which does not exist’³.

The General Court held in Case T-468/16 (*Verein Deutsche Sprache v Commission*) that there exists a presumption of lawfulness attached to the declaration by the institution asserting that documents do not exist⁴. This presumption continues to apply, unless the applicant can rebut it by relevant and consistent evidence⁵. In this regard, a mere suspicion that there must be a[nother] document does not suffice to put in question the presumption of legality of the institution’s statement⁶. The Court of Justice, ruling on an appeal in Case C-440/18 P, has confirmed these conclusions⁷.

In your confirmatory application you point out 2 documents, a letter of 16 March 2023 and a reply of 27 February 2023. Please note that both documents were issued after the registration date of your application and, furthermore, that one of these documents does not pertain to correspondence ‘received’ by the Commission. The reply of 27 February 2023 is a document issued by the Commission.

Pursuant to the settled case-law⁸, a confirmatory application can only be submitted to invite the Commission to reconsider its initial position on the document(s) already requested and not to submit an application for access to other documents.

Therefore, it is not possible to broaden the scope of the request at the confirmatory stage. This can only be done via the submission of a new initial application. You remain entitled to submit a new initial application for access to other documents in accordance with Article 7(1) of Regulation (EC) No 1049/2001.

Given that the Commission does not hold any other documents corresponding to the description given in your application, it is not in a position to fulfil your confirmatory request.

³ Judgment of the Court of Justice of 2 October 2014, *Strack v European Commission*, C-127/13 P, EU:C:2014:2250, paragraph 46.

⁴ Judgment of the General Court of 23 April 2018, *Verein Deutsche Sprache v Commission*, T-468/16, EU:T:2018:207, paragraphs 35-36.

⁵ *Ibid.*

⁶ *Ibid.*, paragraph 37.

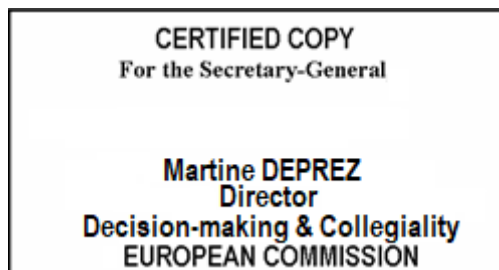
⁷ Order of the Court of Justice of 30 January 2019, *Verein Deutsche Sprache v Commission*, C-440/18 P, ECLI:EU:C:2019:77, paragraph 14.

⁸ Judgment of the General Court (Eighth Chamber) of 10 February 2021, *XC v European Commission*, T-488/18, EU:T:2021:76, paragraph 168.

3. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



For the Commission
Ilze JUHANSONE
Secretary-General