



EUROPEAN COMMISSION

Brussels, 22.10.2024  
C(2024) 7516 final

Arun Dohle

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE  
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under Regulation  
(EC) No 1049/2001 – EASE 2024/1092**

Dear Mr Dohle,

I am writing in reference to your confirmatory application registered on 2 August 2024, submitted in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>2</sup> (hereafter 'Regulation (EC) No 1049/2001').

Please accept our apologies for the delay in replying to your request.

**1. SCOPE OF YOUR REQUEST**

In your initial application of 27 February 2024, registered under reference number EASE 2024/1092, you requested access to:

‘[a]ll information, documents, emails, reports, minutes, contracts related to the EU Peer Review on Children's Rights in Croatia [and in Serbia]’.

In its initial reply of 25 July 2024, the Directorate-General for Neighbourhood and Enlargement Negotiations informed you that it does not hold any documents falling within the scope of your application.

In your confirmatory application you contest this position. You argue the following:

‘ [t]he way this request was handled is unacceptable. The confirmatory appeal had expired. The fact that DG NEAR then sent a so-called initial reply is outside the legal time limit.

---

<sup>1</sup> OJ L 345, 29.12.2001, p. 94.

<sup>2</sup> OJ L 145, 31.5.2001, p. 43.

And, no documents can be identified. Which raises serious questions about the way this peer review was handled, apparently outside formal procedures? And based on wrong legal basis?’

## **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 provided by the Commission department in charge.

In the present case, the Secretariat-General conducted a review of the explicit reply to the initial application, issued by the Directorate-General for Neighbourhood and Enlargement Negotiations on 2 August 2024, which constitutes the final reply of the department in question.

The Commission would like to apologise once again for the delay in replying to your request.

Following your confirmatory application, the Secretariat-General has carried out a renewed search for the documents requested. Following this renewed search, the Secretariat-General confirms that the Commission does not hold any documents that would correspond to the description given in your application.

Indeed, 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.

The Secretariat-General would like to refer in this respect 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’<sup>3</sup>. The above-mentioned conclusion was confirmed in Case C-491/15 P (*Typke v European Commission*), where the Court of Justice held that ‘the right of access to documents of the institutions applies only to existing documents in the possession of the institution concerned and [...] Regulation [(EC) No] No 1049/2001 may not be relied upon to oblige an institution to create a document which does not exist.

It follows that, [...], an application for access that would require the Commission to create a new document, even if that document were based on information already appearing in existing documents held by it, falls outside the framework of Regulation [(EC)] No 1049/2001’<sup>4</sup>.

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

---

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

<sup>4</sup> Judgment of the Court of Justice of 11 January 2017, *Typke v European Commission*, C-491/15 P, EU:C:2017:5, paragraph 31.

asserting that documents do not exist<sup>5</sup>. This presumption continues to apply unless the applicant can rebut it by relevant and consistent evidence<sup>6</sup>. The Court of Justice, ruling on an appeal in Case C-440/18 P, confirmed these conclusions<sup>7</sup>.

In your confirmatory application, you do not provide evidence that the institution is in possession of any documents corresponding to the description provided in your application. Please note that the General Court held in *Verein Deutsche Sprache v Commission* that a mere suspicion that there must be a document does not suffice to put into question the presumption of legality of the institution's statement<sup>8</sup>.

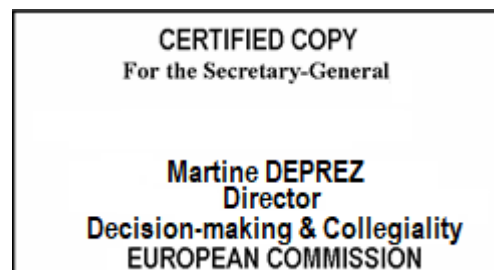
Given that the European Commission does not hold any documents corresponding to the description given in your application, it is not in a position to fulfil your request.

### **3. MEANS OF REDRESS**

Finally, I draw your attention to the means of redress available against this decision. You may bring proceedings before the General Court and/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*



---

<sup>5</sup> Judgment of the General Court of 23 April 2018, *Verein Deutsche Sprache v Commission*, T-468/16, EU:T:2018:207, paragraphs 35-36.

<sup>6</sup> *Ibid.*

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

<sup>8</sup> *Verein Deutsche Sprache v Commission* judgment, cited above, paragraph 37.