

EUROPEAN COMMISSION
Secretariat-General

The Secretary-General

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By registered mail:

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**DECISION OF THE SECRETARY GENERAL ON BEHALF OF THE COMMISSION PURSUANT
TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001¹**

**Subject: Your confirmatory applications for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2015/4318, 2015/4342,
2015/5067**

Dear Ms Freeman,

I am writing in reference to your emails of 18 and 30 September 2015, by which you lodge confirmatory applications in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter Regulation 1049/2001). All above confirmatory applications were registered on 30 September 2015.

1. SCOPE OF YOUR REQUEST

In July 2015 you submitted three initial applications (hereafter: three applications) for access to documents under Regulation 1049/2001. The applications were registered and attributed to various services within the Commission³. The scope of the three

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

² Official Journal L145, 31.05.2001 p.43.

³ GESTDEM 2015/4318 – DG TRADE, GESTDEM 2015/4342 – DG CLIMA, GESTDEM 2015/5067 – DG ENER

applications is the same, as in each of them you requested access to the *list of meetings of [D]irectorate[s]-[G]eneral [TRADE, CLIMA and ENER] officials/representatives (excluding the European Commissioner, her Cabinet and the director-General) and interest representatives (including companies, consultancies and law firms, trade/business/professional associations, think tanks and NGOs) between December 1st 2014 and today.*

In your applications you specified that the requested list should include:

- *the date of the meeting,*
- *which companies/organisations were present at the meeting,*
- *names of the lobbyist(s) that were present,*
- *the sector they represented (business, NGOs, academia, think tanks),*
- *the name and job title of the European Commission officials that were present (e.g. head of unit, etc.),*
- *the issues discussed, if possible in sufficient detail so as to identify the dossiers or policy initiatives covered.*

Respectively on 16 July and 22 July 2015, DG CLIMA and DG TRADE informed you that the wide scope of your request did not allow them to identify any document falling thereunder. In their message, both DGs invited you, in accordance with Article 6(2) of Regulation 1049/2001, to provide more detailed information on the documents you were interested in, such as topics discussed during the meetings and names of the companies met. I also note that in its message of 22 July 2015, DG TRADE explained that while it was not in possession of the documents that would contain the list of all the meetings in which that DG TRADE staff participated, it would be possible to compile such a list if it would cover a concrete, specific topic. DG TRADE emphasised that such list would be provided to you under the provisions of the Code of Good Administrative Behaviour and again asked you to specify the topic(s) you were particularly interested in.

In your replies of 7 August 2015 to DG TRADE and DG CLIMA, you explained that you were interested in receiving *a list of meetings between interest representatives and Commission officials employed at grades AD 9 - AD 16 (including Deputy Directors-General, Principal Advisers, Directors, Heads of Unit and Deputy Heads of Unit, excluding translators and interpreters) since 1 December 2014, regardless of the topic area or legislative file covered (...).* You also made reference to Commission decision C(2014)90484, which obliges Commission services to publish information on meetings held by Directors-General, Commissioners and their Cabinets.

I consider that this clarification applies to all three applications and therefore your request relates to the list of all meetings of DGs TRADE, CLIMA and ENER officials holding the grade AD9 – 16 with (any) external party covering the period from 1 December 2014 until 20 July 2015 (i.e. the date of your initial request).

⁴ Commission decision on publication of information on meetings held between Directors-General of the Commission in organisation and self-employed individuals.

In the replies provided respectively on 28 September 2015 (DG TRADE), 1 September 2015 (DG CLIMA) and 25 September 2015 (DG ENER), the services concerned answered that they did not identify any such list covering the meetings held by staff of their DG.

Through your confirmatory applications you request a review of these positions and present a series of arguments supporting your request. As these arguments are the same in all three confirmatory applications, they will be addressed in the respective parts of this joint decision. The assessment will also address your observations made in the complementary message that you sent to DG TRADE on 12 October 2015.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

In your confirmatory applications, you refer to the general principle of transparency as provided for in Article 15 of the TFEU, according to which EU Institutions (...) *shall conduct their work as openly as possible in order to promote governance and ensure participation of civil society*. You also invoke the overarching concepts of Regulation 1049/2001 which is *to bring about greater openness in the work of the Institutions, as well as to promote good administrative practices on access to documents*.

The importance of the transparency in the operations of the Institutions is unquestionable. The Commission undertook in recent years a series of initiatives to reinforce the transparency of its work, such as the obligation to publish information regarding meetings of Commissioners and top-level Commission officials with external parties. With regard to access to Commission documents, the concept of transparency is implemented through, and in accordance with the legal framework provided for by Regulation 1049/2001.

Following your confirmatory application, the concerned Commission services verified again whether any document exists that would cover the information described in your initial applications and clarified further in your message of 7 August 2015.

As a result of that verification, I confirm that no document held by the Commission contains the information requested. Please note that, according to Article 10(3) of Regulation 1049/2001, *Documents shall be supplied in an existing version and format (...)*. No documents in possession of DG TRADE, CLIMA and ENER contain the requested information. Therefore, no such document exists for any of the respective DGs. Indeed, preparation of a document with the requested contents, by compiling information from a number of other documents, would require the creation of a new document.

The above reasoning finds confirmation in the settled case law of the EU Courts. According to the judgement of the General Court in case T-436/09, only a set of data that can be extracted from a database by means of a normal or routine search can be considered to be a document within the meaning of the definition provided for in Article 3(a) of Regulation 1049/2001⁵. This has been confirmed by the General Court in the recent case T-214/13⁶. In the same judgment, the Court also ruled that the Institution is not required to create a new document, not even by compiling information from a number of existing documents⁷.

In your confirmatory application, you also argue that a document such as the one you request was disclosed to you by DG FISMA, to which you submitted a similar request for access to documents⁸. However, the document disclosed by DG FISMA was extracted through a routine query from the Events Management Tool (EMT). The EMT is a local system used by DG FISMA to register events such as meetings with external parties. It is worth mentioning that the EMT was established by DG FISMA voluntarily and on its own initiative. Taking into account that other Commission Directorates-General are not in possession of such system, they were not able to generate any similar document through a routine query.

With regard to your observations included in the message of 12 October 2015 addressed to DG TRADE, where you point out that a list of meetings such as the one requested at present was actually provided in the past to another applicant by that DG⁹, I would like to explain that the scope of the request you refer to had a strictly defined, limited scope. Precisely, the applicant was asking for a list of meetings in which a specific topic had been discussed. Furthermore, as explained in DG TRADE's message of 21 June 2013, the list that was released was a new, specific document created especially to address that request. Therefore, according to the message of 21 June 2013, the list was provided as a reply to a request for information, rather than as a reply under Regulation 1049/2001.

In light of the above considerations, your confirmatory applications cannot be handled, as the Commission is not in possession of the document requested.

The above conclusion does not prejudice the solution proposed to you by DG TRADE on 22 July 2015, i.e. providing the list of the meetings limited to a specific topic.

⁵ Case T-436/95, *Dufour v ECB*, judgment of 22 October 2011, paragraph 153.

⁶ Case T-214/13, *Typke v Commission*, judgment of 2 July 2015, paragraph 56.

⁷ Case T-214/13, *Typke v Commission*, judgment of 2 July 2015, paragraph 55.

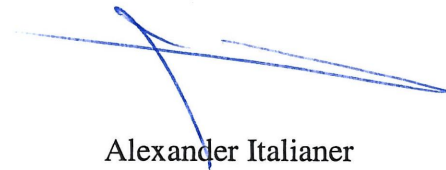
⁸ Gestdem 2015/3846

⁹ Gestdem 2013/2132

3. MEANS OF REDRESS

Finally, I would like to draw your attention to the means of redress that are available against this decision, that is, judicial proceedings and complaints to the Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the functioning of the European Union.

Yours sincerely,



Alexander Italianer