



EUROPEAN COMMISSION

Brussels, 27.2.2019
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Helen Darbshire
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Spain

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

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2019/0433**

Dear Ms Darbshire,
Dear Ms Casajuana,

I refer to your e-mail of 21 January 2019, registered on 24 January 2019, in which you submitted 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 APPLICATION

In your initial application of 13 December 2018, you requested access to documents containing information relating to the Asylum, Migration and Integration Fund³. You provided the detailed list of information you are interested in and the documents to which you requested access:

‘(1) [a] list of all projects that have been (co)financed by A[sylum], M[igration] [and] I[ntegration] F[und] under the objective of return in Greece during the years 2014, 2015,

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

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

³ AMIF.

2016 and 2017'. In particular, [you] would like to receive [the list containing] a breakdown of the following information:

- A[sylum], M[igration] [and] I[ntegration] F[und] National and Specific objectives,
- Project number,
- Project name,
- Beneficiary name,
- The total value of the project, including the EU and the national contribution,

(2) [a] list of all procurement procedures that have been (co)financed by A[sylum], M[igration] [and] I[ntegration] F[und] under the objective of return in Greece during the years 2014, 2015, 2016 and 2017. In particular, [you] would like to receive [the list containing] a breakdown of the following information:

- A[sylum], M[igration] [and] I[ntegration] F[und] National and Specific objectives
- Project number,
- Contract name,
- Contracting authority,
- Contractor,
- The total value of the contract, including the EU and the national contribution.'

In your initial application you clarified that '[you] would prefer that the information be shared in excel file format or similar'. You also underlined that '[...]the data [you] are requesting [...] have been fully disclosed by some Member States, such as Spain or Italy, and that the objective of [your] request is to obtain a full set of the data held by the European Commission in line with the transparency obligations set out by [Regulation (EU) No] 514/2014'.

Your application was attributed to the Directorate-General for Migration and Home Affairs for handling and reply.

In its initial reply of 21 December 2018, the Directorate-General for Migration and Home Affairs clarified you that information relating to projects, beneficiaries and funding provided by the Asylum, Migration and Integration Fund is published by the authorities of the Member States. Indeed, the information such as that referred to in point 1 of your initial application is available on the website of the Greek Responsible Authority⁴.

With regard to the information mentioned in point 2 of your initial application, the Directorate-General for Migration and Home Affairs informed you that it does not hold

⁴ <https://www.amifisf.gr/katalogos-draseon/>.

any documents. The Directorate-General for Migration and Home Affairs underlined that in line with the principle of the shared management implementation mode, the Member States are responsible for implementation of the projects financed from the Asylum, Migration and Integration Fund. Consequently, the Directorate-General for Migration and Home Affairs suggested that in order to obtain information listed in point 2 of your initial application, you should contact the relevant Greek authorities.

In your confirmatory application, you request a review of this position. By referring to and quoting the relevant provisions of Regulation (EU) No 516/2014⁵ and Regulation (EU) No 966/2012⁶, you argue that ‘[you] expect the [European] Commission to have in its possession documents which fall within the scope of [point 2 of your] initial request [...]’.

I note that in your confirmatory application you acknowledged that the information available under the link provided by the Directorate-General for Migration and Home Affairs in its initial reply corresponds to point 1 of your initial application. Consequently, your confirmatory application is limited to the information referred to in point 2 thereof.

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 fresh review of the reply given by the Directorate-General concerned at the initial stage.

Point 2 of your initial application relates to the ‘list of all procurement procedures that have been (co)financed by A[sylum], M[igration] [and] I[n]tegration F[und] under the objective of return in Greece during the years 2014, 2015, 2016 and 2017’. That list should contain the ‘contract name’, ‘project number’, ‘[name of the] contractor’ and other information listed in point 2 of your initial application.

Following your confirmatory application, the European Commission has carried out a renewed, thorough search for such documents. Following this renewed search, I confirm that the European Commission has not identified any document falling under such defined scope of your application.

Indeed, in line with the provisions of Article 2(3) and Article 10 of Regulation (EC) No 1049/2001, the right of access guaranteed by that Regulation applies only to existing documents in possession of the institution concerned.

⁵ Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC, Official Journal L 150 of 20.5.2014, pages 168–194.

⁶ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, Official Journal L 298 of 26.10.2012, pages 1–96.

Article 2(3) of Regulation (EC) No 1049/2001 provides that ‘[t]his Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union’.

Article 10(3) of the above-mentioned regulation provides that ‘[d]ocuments shall be supplied in an existing version and format [...]’.

I note that according to your confirmatory application, ‘[you] do [...] recognise that the information might be contained in multiple documents [...], all of which would therefore fall under the scope of our request. [...]’

Please note, however, that extracting and compiling information (such as that listed in your initial application) from various existing documents, would result in the creation of a new document which, as explained above, does not currently exist within the European Commission. As confirmed by the Court in Case C-491/15 P⁷, ‘[...] 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 No 1049/2001.’

In the light of the above, given that the European Commission holds no documents such as those mentioned in point 2 of your application, it is not possible to handle your application.

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,



For the Commission
Martin SELMAYR
Secretary-General

⁷ Judgment of the Court of Justice of 11 January 2017, *Typke v Commission*, C-491/15 P, EU:C:2017:5, paragraph 31.