



EUROPEAN COMMISSION

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Belgium

**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 – GESTDEM
2021/4822**

Dear Ms Roynel,

I am writing in reference to your e-mail of 20 September 2021, registered on 23 September 2021, by which you lodge 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’).

In your initial application of 16 July 2021 addressed to the European Commission’s Directorate-General for Health and Food Safety, you requested access to, I quote:

- ‘– Comparative Assessment's review under the REFIT program (article 50, annex IV and Guidance): PAI Working Group's ongoing work and inputs, contribution of stakeholders.
- Statistics on candidates for Substitution’s approved in PPPs, on comparative assessments which led to substitution since 2018.
- Role of EPPO guidelines, potential interferences and pressures to undermine EU standards.

¹ OJ L 345, 29.12.2001, p. 94.

² OJ L145, 31.05.2001, p. 43.

- REFIT alignment on the EU Green Deal objectives (role of the Regulation 1107/2009 in the achievement of the target 2 of the Farm to Fork Strategy)’.

In its initial reply of 14 September 2021, the Directorate-General for Health and Food Safety informed you that it had identified the following two documents as falling under the scope of your application:

- Email with annexes from PAN on comparative assessment,
- Letter from PAN Europe on comparative assessment.

Following their assessment under the provisions of Regulation (EC) No 1049/2001, the Directorate-General for Health and Food Safety granted you partial access to these documents and informed you that full access was prevented by the exception to the right of access provided in of Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

In your confirmatory application, you request a review of this position, stating that you ‘find it very difficult to believe that the only documents available are those that PAN Europe sent [to the European Commission]’.

I would like to inform you that further to your confirmatory application, the European Commission has carried out a renewed search for the documents requested. Following this renewed search, I can confirm that the European Commission does not hold any further documents that would correspond to the description provided in your application.

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. I 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’³.

The above-mentioned conclusion has been 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 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 1049/2001’⁴.

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

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 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 exist⁵. This presumption continues to apply, unless the applicant can rebut it by relevant and consistent evidence⁶. The Court of Justice, ruling on an appeal in Case C-440/18 P, has confirmed these conclusions⁷.

I take note of your further claim raised in your confirmatory application that ‘a group has started working on this issue (PAI WG) through which the Member States have made their suggestions’, and that you ‘know that the issue of the renewal of the approval of candidates for substitution is continuously being discussed and worked on’ by the Directorate-General for Health and Food Safety.

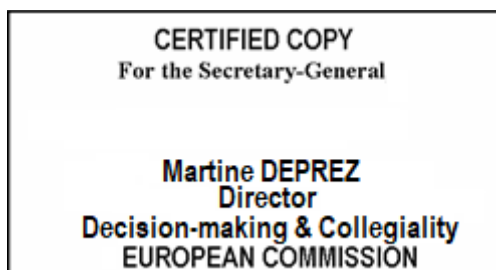
Allow me to clarify that, as regards the first part of your claim, the work of the working group is at a very early stage, thus the European Commission is not in a position to identify documents other than those already disclosed in the initial reply. With regard to the second point you raise, please note that currently, there is no structured work on the renewal of candidates for substitution being conducted within the European Commission. Certain internal and preliminary discussions are held on a case-by-case basis, under the framework of specific active substance renewals, however they have not resulted in any documents being either drawn up or received by the European Commission.

Therefore, the arguments raised in your confirmatory application do not provide evidence that the institution is in possession of documents corresponding to the description provided in your application. The General Court held in Case T-468/16 (*Verein Deutsche Sprache v Commission*) that a mere suspicion that there must be more documents does not suffice to put in question the presumption of legality of the institution’s statement⁸.

Given that the European Commission does not hold any other documents falling within the scope of your application, the Secretariat-General is not in a position to fulfil your request.

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

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

⁶ *Ibid.*

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 *Verein Deutsche Sprache v Commission* judgment, cited above, paragraph 37.