



EUROPEAN COMMISSION

Brussels, 2.2.2024  
C(2024) 797 final

Mr 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 2023/1130**

Dear Mr Dohle,

I am writing in reference to your confirmatory application of 11 July 2023, registered on 19 July 2023, 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> (hereinafter '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 19 February 2023, registered on 20 February 2023 under the reference number Ares(2023)1209503, you request access to '*Agenda and minutes of the EU - CROATIA STABILISATION AND ASSOCIATION AGREEMENT, 1st meeting of the Sub-committee on Justice, Freedom and Security*'.

Given the subject matter of your application, the initial request for access to documents was assigned to the Directorate-General for Neighbourhood and Enlargement Negotiations (hereinafter "DG NEAR"), which identified the following document:

- 1) Ares(2023)4551250 - Agreed minutes of the EU-Croatia Subcommittee on Justice and Home Affairs, Brussels, 30 June 2005. Reference: 15127/06, Working Party on Enlargement and Countries Negotiating Accession to the EU.

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

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

In its initial reply of 30 June 2023, registered under the reference number Ares(2023)4551250, DG NEAR granted partial access to the above identified document, with redactions covered by the exception laid down in Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

In your confirmatory application registered on 19 July 2023, you request a review of this position, deeming the reply received unsatisfactory due to the lack of the agenda related to that meeting.

Consequently, the scope of the confirmatory review is circumscribed to this part of your initial request relating to the agenda of the meeting.

## **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 to the initial application, issued by the Commission service responsible.

Against this background, the Secretariat-General 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 additional document that would correspond to the description given 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.

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 reaffirmed 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>.

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<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.

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 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.

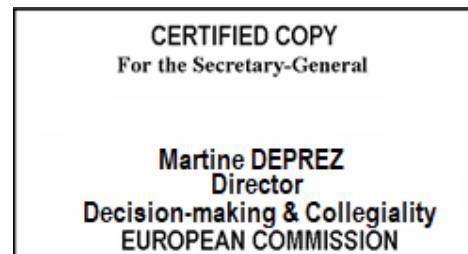
Given that the European Commission does not hold any additional document corresponding to the description given in your application, it is not able to fulfil your request.

### **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*



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<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.