EUROPEAN COMMISSION

Brussels, 10.4.2024
C(2024) 2503 final

Mr Peter Teffer

DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001

Subject: Your confirmatory application for access to documents under Regulation (EC) No 1049/2001 – EASE 2024/0147

Dear Mr Teffer,

I refer to your email of 5 February 2024, registered on the same day, 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 documents (hereafter 'Regulation (EC) No 1049/2001').

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

1. SCOPE OF YOUR REQUEST

In your initial application of 10 January 2024, registered on the same day, you requested access to, I quote, '[a]ll documents - including but not limited to e-mails, minutes, notes, guidances, presentations, reports - related to when the phrase "Team Europe" should be used.'

Your request was, under the above reference number, attributed to the Directorate-General for International Partnerships. After a clarification request sent to you on 15 January, you further specified that your request, I quote, 'should be understood as including documents which contain guidelines on when to use this term, and/or documents explicitly defining what is "Team Europe", and/or documents about the institutional nature of "Team Europe".'

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In its initial reply of 2 February 2024, the Directorate-General for International Partnerships informed you that it had identified three publicly available resources as falling within the scope of your request, namely Capacity4Dev\(^3\), European Council Conclusions\(^4\) and INTPA Academy\(^5\). It furthermore provided additional links leading to specific websites and documents under the identified resources.

In your confirmatory application, you request a review of this position. You write that you, I quote, ‘would like the secretariat-general to check whether all internal documents that fall under the scope of [your] request have properly been identified.’ In addition, you point out that you cannot access two of the links provided to you in the initial reply.

**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 given at the initial stage.

Against this background, the Secretariat-General has carried out a renewed search for the documents requested. Following this review, the Secretariat-General has identified the following documents as falling under the scope of your request:

- Methodological note on TEI Design, reference Ares(2024)915781 (hereinafter ‘document 1’)
- Frequently Asked Questions (FAQ) – TEIs, reference Ares(2024)915781 (hereinafter ‘document 2’)
- Working Better Together (WBT) guidance, reference Ares(2024)915781 (hereinafter ‘document 3’)

Further to the assessment of the identified documents under Regulation (EC) No 1049/2001, I am pleased to inform you that full access can be granted to documents 1 - 3.

Please note that documents 1 and 2 are PDF versions of the websites that were not directly accessible to you under the links provided by the Directorate-General for International Partnerships in its initial reply\(^6\). Document 3 originates from a webpage that was indicated to you by the Directorate-General for International Partnerships in its initial reply and is included in the present reply for your convenience\(^7\).

As regards your request for further documents that fall within the scope of your request, the Secretariat-General confirms that the European Commission does not hold any further documents that would correspond to the description given in your initial application.

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3 Please see [https://capacity4dev.europa.eu/_en](https://capacity4dev.europa.eu/_en)
5 Please see [https://webgate.ec.europa.eu/intpa-academy/](https://webgate.ec.europa.eu/intpa-academy/)
7 Please see ‘PDF version’ on webpage [Section 1: Team Europe | Capacity4dev (europa.eu)](https://capacity4dev.europa.eu/library/methodological-note-tei-design_en?listing=group_library&refgid=109701)
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 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’⁸.

The above-mentioned conclusion has been confirmed in 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 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 No 1049/2001’⁹.

Please note that the Team Europe approach is a joint effort of the EU institutions, EU Member States (including their development agencies and development finance institutions), the European Investment Bank and the European Bank for Reconstruction and Development. Therefore, the guidance prepared by the Commission is not internal but put at the disposal of all Team Europe approach actors via the Team Europe group on the Capacity4Dev platform.

Beyond the documents identified in the present reply, the Commission does not hold further documents falling within the scope of your request. In this regard, please note that the General Court held in 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 exist¹⁰. This presumption continues to apply unless the applicant can rebut it by relevant and consistent evidence¹¹. In this regard, a mere suspicion that there must be a document does not suffice to put into question the presumption of legality of the institution’s statement¹². The Court of Justice, ruling on an appeal in Case C-440/18 P, has confirmed these conclusions¹³.

Given that the Secretariat-General does not hold any further documents corresponding to the description given in your initial application, it is not in a position to fulfil your request.

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¹¹ Ibid.
¹² Ibid., paragraph 37.
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*

Enclosures: (3)