



EUROPEAN COMMISSION

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Mr Bram Vranken
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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
2019/539**

Dear Mr Vranken,

I am writing in reference to your email of 20 March 2019, registered on the next 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 documents² (hereafter ‘Regulation (EC) No 1049/2001’).

Through your initial application of 28 January 2019, you requested access to:

‘[a]ll documents containing information relating to the involvement of arms industry actors not already disclosed to the public (e.g. arms companies, their lobby groups, etc.) and private research centres in the context of:

- (1) the setting up and continuing development of the European Defence Industrial Development Programme ("EDIDP"), including in relation to considering a proposal to cover matters now addressed by the EDIDP, the decision to propose the EDIDP, subsequent legislative consideration of the EDIDP proposal and activities undertaken after the adoption of the EDIDP legislation; and
- (2) the decision to propose the European Defence Fund and its subsequent legislative consideration.’

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

² Official Journal L145 of 31.05.2001 p. 43.

You specified that you are ‘seeking documents - not already disclosed to the public - which identify Commission interaction with any such arms industry actor and private research centre in relation to the initiatives above. Such documents may comprise minutes of meetings/correspondence with one or more of such stakeholders or otherwise refer to such stakeholders (for example, a document that identifies the type of entities that the Commission wanted to consult in relation to matters covered by the above-mentioned initiatives).’

By letter of 7 March 2019, the Directorate-General for Internal Market, Industry, Entrepreneurship and SMES informed you that the scope of your application was partially the same as the scope of a previous application you made on 8 March 2018 and which was registered under reference GESTDEM 2017/7033. In that application, you had requested access to all documents containing the following information:

- ‘1. [d]etails of all stakeholders consulted (including member states, industry, academia and others) on the decision to establish:
 - a) The European Defence Fund; and
 - b) The Defence Industrial Development Programme.
2. Details of all meetings, including minutes of meetings, with all stakeholders identified under 1(a) and 1(b) respectively, in relation to:
 - a) The European Defence Fund; and
 - b) The Defence Industrial Development Programme.
3. All correspondence with the stakeholders identified under 1(a) and 1(b) respectively, in relation to:
 - a) The European Defence Fund; and
 - b) The Defence Industrial Development Programme.’

The Directorate-General for Internal Market, Industry, Entrepreneurship and SMES referred you to the Commission decision C(2018)7681 final, by which the European Commission had replied to your confirmatory application referenced under number GESTDEM 2017/7033.

The Directorate-General for Internal Market, Industry, Entrepreneurship and SMES underlined that the legal and factual circumstances supporting the conclusions of the assessment carried out in the Commission decision C(2018)7686 final remain valid also with regard to your current application for the documents falling within the scope of this request. As to the part of your request which was not covered by the Commission decision referring to your previous application, it informed you that the searches for additional documents falling within the scope of your current request comprised possible ‘private centres’ and ‘arms industry actors’. The result of these searches was that the European Commission does not hold any documents falling under this part of your request.

In your confirmatory application, you stated that the ‘Commission's assessment of the request is based on the mistaken assumption that the Gestdem 2019/0539 request is the same in scope as Gestdem 2017/7033’. You explained that in ‘Gestdem 2017/7033 [you] requested documents pertaining to the decision to establish the EDIDP and EDP. Specifically, documents identifying stakeholders who were consulted and any meetings and

correspondence with such stakeholders were requested. In the confirmatory reply to the Gestdem 2018/7033 request dated 14 November 2018, the Commission construed that request as seeking, inter alia, a document or documents with (i) a list of stakeholders consulted; and (ii) a list of meetings with stakeholders. The Commission determined that no such lists existed and therefore provided no documents identifying meetings or consultations with stakeholders. Rather, only documents pertaining to correspondence were provided.’ In addition, you explained the scope of your current request under reference number GESTDEM 2019/539 as follows:

‘[t]he request covered by Gestdem 2019/0539 is different from the request covered by Gestdem 2017/7033 in a number of respects (taking into account the Commission's interpretation of the scope of Gestdem 2017/7033).

First, the Gestdem 2019/0539 request is concerned not only with the decisions to set up EDIDP and EDP but also the broader contexts and subsequent stages of the initiatives;

Secondly, the Gestdem 2019/0539 request does not seek any document with a list of stakeholders or list of meetings, as the Commission finally construed Gestdem 2017/7033. Rather, it seeks all documents identifying interactions with the stakeholders subject to the request;

Thirdly, unlike the Gestdem 2017/7033 request, the request covered by Gestdem 2019/0539 does not seek information related to interactions with Member States. Further, it seeks documents that not only identify interactions with specific stakeholders but also documents that refer to actual or contemplated interaction with stakeholders in a more general way; and

Fourthly, as the Commission has rightly recognised, the time period is different since Gestdem 2019/0539 covers documents created since the confirmatory decision in Gestdem 2017/7033 (but also because it extends to documents evidencing interactions beyond any "decision" stages).

With the above in mind, the Commission is requested to reconsider the request covered by Gestdem 2019/0539. Under no circumstances should the Commission understand the request only to ask for documents showing lists of meetings or consultations with stakeholders. Rather, what is requested is documents – not already disclosed to the public – identifying actual or contemplated interaction with arms industry actors and private research centres (in relation to the EDIDP and EDP). Such documents may include, for example, an email confirming a meeting with an arms industry actor or a calendar record showing a meeting with such stakeholders. To the extent that the request produces documents already identified under point 3 of the Gestdem 2017/7033 request, they may be excluded.’

Following your confirmatory application, the Secretariat-General asked you for additional clarifications, based on Article 6(2) of Regulation (EC) No 1049/2001. It explained that the description given in your application does not enable the European Commission to identify concrete documents, which would correspond to your request. It informed you that the document management systems of the European Commission do not yield any results based on the terms of your request, as for example ‘actual or contemplated interaction with arms industry actors and private research centres (in relation to the EDIDP and EDP)’ or ‘setting

up and continuing development of the EDIDP' and 'the decision to propose EDF and its subsequent legislative consideration'. In this context, it asked you to provide additional information making it possible to identify the documents requested, such as references, dates or periods during which the documents would have been produced, persons or bodies who drafted the documents, level of interaction etc. The European Commission did not receive any reply to this clarification request.

The European Commission has made a renewed, thorough search for the documents requested based on the indications you had provided. Based on this renewed search, I confirm that the European Commission has not identified any documents held by it that would fall under the scope of your application for access to documents.

As specified in Article 2(3) of Regulation (EC) 1049/2001, the right of access as defined in that Regulation applies only to existing documents in the possession of the institution. Given that no such documents falling under the scope of your application have been identified at the confirmatory stage, the European Commission is not in a position to handle your confirmatory application.

Finally, I would like to draw your attention to the means of redress that are available against this decision. You may either bring proceedings before the General Court or file a complaint with 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