



EUROPEAN COMMISSION

Brussels, 26.6.2019
C(2019) 4962 final

Ms Josefina Marti
Calle Juan Bravo 62
28006 Madrid
Spain

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

**Subject: Your confirmatory applications for access to documents under Regulation
(EC) No 1049/2001 – GESTDEM 2019/1246**

Dear Ms Marti,

I refer to your email of 29 March 2019, registered on 4 April 2019, in which you submit 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 REQUEST

On 27 February 2019, you submitted an initial application for access to documents under Regulation (EC) No 1049/2001 to the Directorate-General for Climate Change, in which you requested access to:

- ‘All agendas, minutes, notes, documents, presentations, videos (and any other information) produced and exchanged in the 7 meetings registered between Commissioner Miguel Arias Cañete and CIDSE (An international alliance of Catholic development agencies);
- A list of all the people present at each meeting and their roles;
- All the correspondence (including phone calls, e-mails, letters) between Commissioner Miguel Arias Cañete (or any member of his Cabinet) and CIDSE from 2014.’

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

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

This application was registered under reference number GESTDEM 2019/1246.

By e-mail of 19 March 2019, the Directorate-General for Climate Change sent you a proposal for a fair solution, based on Article 6(3) of Regulation (EC) No 1049/2001. It informed you that your application concerns extensive timeframe (in particular point 3) and potentially a considerable number of documents, still to be identified and assessed. You kindly agreed to narrow down the temporal scope of your request to a shorter timeframe (from 2018 to the day of your request).

In light of the above, the European Commission has identified the following document, originating from a third party, as falling under the scope of your application:

- Letter of 13 July 2018 from the Bishops' Conferences of the European Union to Commissioner Cañete (Ares(2018)3738271).

Under the provisions of Article 4(4) of Regulation (EC) No 1049/2001, with regard to third party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed. In accordance with this provision, the Directorate-General for Climate Change consulted the third party author of the document (the Bishops' Conferences of the European Union), who agreed with wide partial access to this document, subject only to the redactions of personal data, in accordance with Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

Through your confirmatory application you request a review of this position. You argue that 'point 1 and 2 are not answered' and 'in point 3, I agreed to reduce the period only to one year, because you explained there were many documents concerning this request and there wasn't time enough to cope with more years.'

Furthermore, you state that 'this is why I ask again for all the time-lapse I requested in the first place'. This extends the scope of your initial request for access to documents as agreed with you after the fair solution proposal. Consequently, this part of your request covering all the correspondence (including phone calls, emails and letters) between Commissioner Miguel Arias Cañete (or any member of his Cabinet) and CIDSE from 2014 to January 2018 falls outside the scope of this confirmatory decision and will be registered as a new initial request, which will be dealt with by the Directorate-General for Climate Change in due course.

In your confirmatory application, you do not question the redactions of personal data in the document disclosed to you at the initial stage which is why I consider these parts as falling outside the scope of this confirmatory decision.

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.

Following this renewed search, I confirm that the European Commission does not hold any further documents that would correspond to the description given in points 1, 2 and 3 of your application other than the one already identified by the Directorate-General for Climate Change in its initial reply.

Indeed, 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 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’.⁴

Furthermore, the General Court held in Case T-468/16 (*Verein Deutsche Sprache v European Commission*) that there exists a presumption of lawfulness attached to the declaration by the institution asserting that documents do not exist.⁵ This presumption continues to apply, unless the applicant can rebut it by relevant and consistent evidence.⁶ The Court of Justice, ruling on an appeal in Case C-440/18 P, has recently confirmed these conclusions.⁷

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

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.

⁵ Judgment of the General Court of 23 April 2018, *Verein Deutsche Sprache v European 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, EU:C:2019:77, paragraph 14.

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
Martin SELMAYR
Secretary-General