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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 - GESTDEM 2020/1909

Dear Mr Hoedeman,

I refer to your e-mail of 30 April 2020, registered on 4 May 2020, 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 documents (hereafter ‘Regulation (EC) No 1049/2001’).

1. SCOPE OF YOUR APPLICATION

On 3 April 2020 you submitted the initial application, in which you requested access to documents concerning, I quote, ‘[…] the Commission's plans for implementing “steps to ensure that Member States comply with the existing notification obligation under the Services Directive in order to identify and eliminate new potential regulatory barriers”’. In this context, you refer to, I quote, ‘[s]uch steps were announced in the Single Market Enforcement Action Plan (SMEAP) presented in March 2020 (Action 11). […]’ And underline that, I quote, ‘[t]here is no further information in the public domain on what kind of steps the Commission intends to take, which means public scrutiny and informed debate is virtually impossible’. You conclude that, I quote, ‘[t]here is therefore a clear public interest in the release of the requested documents’.

Your initial application was attributed to the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs for handling and reply. It replied to your application on 28 April 2020, informing you that it does not hold any documents that would correspond to the description given in your application.

You asked for the review of that position by submitting the confirmatory application on 30 April 2020, in which you requested that the European Commission, I quote, ‘[does] a new search of the [European] Commission’s archives and release the relevant documents’. You also clarified what type of documents interest you.

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.

As a preliminary comment, I would like to underline that the dates of the adoption of the Single Market Enforcement Action Plan and the date of your application for access to documents were very close. Indeed, the European Commission has adopted the Action Plan on 10 March 2020, while the date of the submission of your application for access to documents is 4 April 2020. Consequently, the Commission services were not in the position to establish documents with the concrete steps envisaged to implement the Action.

In the light of the above, following your confirmatory application, the European Commission has carried out a renewed, thorough search for document(s) that would contain the information requested. The search included also the period after the date of the initial reply provided by the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs. Following this renewed search, I confirm that the European Commission has not identified any such documents.

In line with the provisions of Article 2(3) and Article 10 of Regulation (EC) No 1049/2001, the right of access guaranteed by that Regulation applies only to existing documents in possession of the institution concerned.

Article 2(3) of Regulation (EC) No 1049/2001 provides that ‘[t]his Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union’.

Article 10(3) of the above-mentioned regulation provides that ‘[d]ocuments shall be supplied in an existing version and format […]’.

In the light of the above, given that the European Commission holds no documents containing information of the level of detail that you requested, it is not possible to handle your confirmatory application.
3. **Means of Redress**

Finally, I would like to draw your attention to the means of redress that are available against this decision, that is, judicial proceedings and complaints to the Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION

For the Commission
Ilze JUHANSONE
Secretary-General