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Editorial 'Messago.pl'

██████████  
██████████ Warsaw  
Poland

**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 - GESTDEM 2018/6959**

Dear ██████████,

I refer to your letter of 12 February 2019, registered on 13 February 2019, in which you submitted 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<sup>2</sup> (hereafter 'Regulation (EC) No 1049/2001').

**1. SCOPE OF YOUR APPLICATION**

On 26 December 2018, ██████████ a ██████████ with 'Mesago.pl', submitted an initial application in which he requested access to '[d]ocument(s) conforming the fact of the meeting, in a time period between May 1<sup>st</sup>, 2018 and May 10<sup>th</sup>, 2018, of the First Vice-President of the European Commission Frans Timmermans with yet unknown [...] Polish judge – representative of Polish judges' associations'. ██████████ clarified that '[t]he requested document(s) should contain a certain date of [the] aforementioned meeting, a name and a surname of the judge present and possibly, even brief, minutes from the meeting'.

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

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

The application was attributed to the Directorate for Transparency, Efficiency and Resources of the Secretariat-General of the European Commission for handling and reply.

In its initial reply of 1 February 2019, the Directorate for Transparency, Efficiency and Resources of the Secretariat-General of the European Commission informed the applicant that the information about all meetings held between the First Vice-President of the European Commission and organisations or self-employed individuals is available in a public calendar on the 'Europa' website<sup>3</sup>. Indeed, according to the information presented on that website, the First Vice-President of the European Commission met on 7 May 2018 the representatives of the organisations 'Iustitia' and 'Wolne Sądy'.

The Directorate for Transparency, Efficiency and Resources of the Secretariat-General of the European Commission also referred to the provisions of Article 5 of Commission Decision 2014/839/EU<sup>4</sup>, according to which the names of individuals (acting on behalf of organisations or self-employed individuals) or the officials of the European Commission attending the meetings are not made public, unless they have unambiguously given their consent.

Consequently, the above-mentioned information available on the 'Europa' website is limited to the names of the organisations whose representatives met the First Vice-President of the European Commission on 7 May 2018.

The Directorate for Transparency, Efficiency and Resources of the Secretariat-General of the European Commission also explained that, with regard to the documents containing the names and surnames of the attendees of the above-mentioned meeting, to the extent that they are indeed in the possession of the European Commission, access thereto must be refused, based on the exception protecting privacy and the integrity of the individual, provided for in Article 4(1)(b) of Regulation (EC) No 1049/2001.

As regards the minutes of the meeting in question, the Directorate for Transparency, Efficiency and Resources of the Secretariat-General of the European Commission informed the applicant that that it does not hold any documents that would correspond to the description provided in the initial application.

In the confirmatory application, you request a review of this position. In particular, you underline that the decision of the Directorate for Transparency, Efficiency and Resources of the Secretariat-General of the European Commission to refuse access to 'document(s) containing name(s) and surname(s) of Judge(s) who took part in the meeting of the First Vice President [...] with [the organisations] "Iustitia" and "Wolne Sądy" [...], due to protecting privacy the integrity of the individual [...] lacks an appropriate legal basis'.

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<sup>3</sup> <http://ec.europa.eu/transparenevinitiative/meetings/meeting.do?host-b47bf526-b773-40e7-9392-89d454e0672f&d-6679426-p=3>.

<sup>4</sup> Commission Decision 2014/839/EU, Euratom of 25 November 2014 on the publication of information on meetings held between Members of the Commission and organisations or self-employed individuals, Official Journal L 343 of 28.11.2014, p. 22.

In this context, you argue that '[the] judge(s), who met with Frans Timmermans on 7 May 2018, were not acting as individuals, whole privacy and integrity ought to be protected under Article 4(1)(b) of Regulation (EC) No 1049/2001, but was (were) acting as Polish public officer(s) in course of their duty [...]. Consequently, '[...] Polish people do have a right to know about actions of persons who hold significant power and have wide privileges in their state [...].

Finally, you also underline that your application is '[...] restricted to public officers only', that is the representatives of two organisations that the First Vice-President of the European Commission met on 7 May 2018.

## **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 by the relevant Directorate-General at the initial stage.

I would like to clarify the scope of your initial and confirmatory applications. The wording used in the initial application of 28 December 2018 ('[t]he requested document(s) should contain [...], a name and a surname of the judge present [...]' ) and the argumentation employed in your confirmatory application ('[...] [the] request [is] restricted to public officers only'), indicates that you are interested in the documents related to the meeting on 7 May 2018, only in so far as these documents contain '[the] name and surname of the judge present [at the meeting]' and that the above-mentioned name(s) would be disclosed to you.

According to a well-established case law, the right of access to documents of the institutions applies only to existing documents in the possession of the institution concerned<sup>5</sup>.

As explained in point 1 of this decision, the First Vice-President of the European Commission met the representatives of 'Iustitia' and 'Wolne Sądy' on 7 May 2018. Consequently, the names of the above-mentioned representatives would normally be included in the exchanges between the administrative staff of the European Commission and the two organisations concerning the organisation of that meeting or in the minutes from that meeting.

Following your confirmatory application, the European Commission has carried out a renewed, thorough search for the documents requested. Following this renewed search, I confirm that the European Commission does not hold any such documents.

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<sup>5</sup> Judgment of the Court of Justice of 11 January 2017, *Typke v Commission*, C-491/15 P, EU:C:2017:5, paragraph 31 and Judgement of the Court of Justice of 30 January 2019, *Verein Deutsche Sprache*, C-448/18 P, EU:C:2019:77, paragraph 14.

Indeed, the e-mail exchanges relating to the organisation of the meeting were considered as short-lived support material and were not registered in the corporate document management systems of the European Commission. With regard to the minutes of that meeting, no such document is held by the European Commission, as explained by the Directorate for Transparency, Efficiency and Resources of the Secretariat-General of the European Commission in its initial reply.

Consequently, the European Commission has not identified any documents (other than those that are publicly available and mentioned in point 1 of this decision) held by it that would fall under the scope of your application for access to documents.

Given that no such documents have been identified, the European Commission is consequently not in a position to handle your 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,



*For the Commission*  
*Martin SELMAYR*  
*Secretary-General*