



EUROPEAN COMMISSION

Brussels, 13.8.2019  
C(2019) 6144 final

████████████████████  
Parliament of the Czech Republic  
U Krematoria 2636, 53002 Pardubice  
Czech Republic

**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 2019/3579**

Dear ██████████,

I refer to your email of 9 July 2019, registered on 12 July 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 documents<sup>2</sup> (hereafter 'Regulation (EC) No 1049/2001').

In your initial application of 20 June 2019, you submitted a request for access to the following documents, I quote:

- 'the minutes of the meeting which took place on 20 June 2019 between the ██████████ ██████████, and the ██████████ in conflict of interest in relation to the EU budget, ██████████

In its initial reply of 8 July 2019, the Secretariat-General of the European Commission informed you that the European Commission does not hold any documents that would correspond to the description given in your application.

In your confirmatory application, you request the European Commission to reconsider its position. More specifically, you argued the following, I quote, 'I kindly ask you ██████████ ██████████ to prepare the record of the meeting which took place on 20 June 2019 between you ██████████ and the ██████████ in

<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.

conflict of interest in relation to the EU budget, [REDACTED] and provide me that record by Friday 12 July 2019 given that it results from the attached letter that you [REDACTED] have not prepared that record so far despite your legal obligation to do so’.

You further explain that the failure to provide minutes ‘[...] makes it impossible for the elected members of Parliament of Member States, such as [yourself], to check whether (i) [REDACTED] or [REDACTED] are not violating Article 61 of Regulation 1046/2018/EC, and (ii) to exercise democratic control over the executive institutions of the European Union (such as [REDACTED] and executive members of the Czech Government (such as [REDACTED]

In this context, 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 documents that would correspond to the description given in your application.

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 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’.<sup>3</sup>

The above-mentioned conclusion has been confirmed in Case C-491/15 P (*Typke v 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’.<sup>4</sup> (emphasis added).

Furthermore, the General Court held in Case 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 exist.<sup>5</sup> This presumption continues to apply, unless the applicant can rebut it by relevant and consistent evidence.<sup>6</sup> The Court of Justice, ruling on an appeal in Case C-440/18 P, has recently confirmed these conclusions.<sup>7</sup>

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<sup>3</sup> Judgment of the Court of Justice of 2 October 2014, *Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 46.

<sup>4</sup> Judgment of the Court of Justice of 11 January 2017, *Typke v Commission*, C-491/15 P, EU:C:2017:5, paragraph 31.

<sup>5</sup> Judgment of the General Court of 23 April 2018, *Verein Deutsche Sprache v Commission*, T-468/16, EU:T:2018:207, paragraphs 35-36.

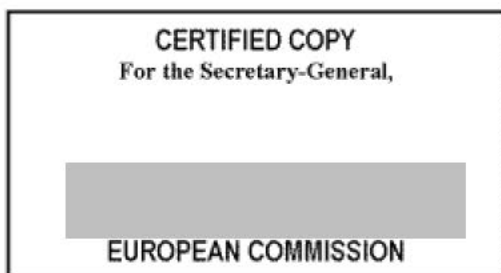
<sup>6</sup> *Ibid.*

<sup>7</sup> Order of the Court of Justice of 30 January 2019, *Verein Deutsche Sprache v Commission*, C-440/18P, EU:T:2018:207, paragraph 14.

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

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*

