Subject: Your confirmatory application for access to documents – GESTDEM 2019/5468

Dear [Name],

I am writing in reference to your email of 10 October 2019, registered on 11 October 2019, 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 documents (hereafter ‘Regulation (EC) No 1049/2001’).

Through your initial application of 3 August 2019, you requested access to ‘[m]onitoring of National Election Observation Selection’.

By letter of 10 October 2019, the Service for Foreign Policy Instruments informed you that it was not able to identify any further documents as falling within the scope of your request, than those provided in your previous request for access to documents and subsequent confirmatory application, referenced GESTDEM 2019/28233, in which you ask for documents falling under similar scope.

In your confirmatory application you question the absence of any documents. You cite the Ombudsman decision on complaint 884/2010/VIK4 of 17 February 2011, by which the Ombudsman takes the view, in point 2 of the conclusions, that the Commission should ‘look into possible ways of monitoring the pre-selection procedure for selecting observers at national level, so as to ensure the fairness and integrity of the selection procedure as a whole’.

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2 OJ L 145, 31.05.2001, p. 43.
You also cite to your support in the confirmatory application a document of the Irish Department of Foreign Affairs and Trade related to Overseas Election Observation Roster.

Against this background, the European Commission has carried out a renewed, thorough search for the documents requested. Following this renewed search, I confirm that the Commission does not hold any documents that would correspond to the description given in your application.

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.

Please note that the European Commission does not have any document related to the monitoring of national election observation selection because it is under the exclusive remit of the national authorities (focal points, in the present case, the Irish focal point) to define their pre-selection criteria for nominating their candidates for short-term and long-term observers.

The European Commission did not set up any monitoring mechanism for the pre-selection of observers. The European Union is competent to launch EU observation missions with key staff provided by the Member States according to their own internal procedures to apply the rule of law. This is why Member States are providing key staff to monitor the electoral processes in third countries. Creating a mechanism whereby the Commission monitors the election observation selection at national level would imply that the Commission has doubts about the fairness of Member States’ procedure, which would run against the principle of subsidiarity, proportionality and conferral of competences to the European Union.

As indicated by the Ombudsman in the referred decision, a complainant should use national remedies, including the national ombudsman, if this person has any doubt/claim against a national selection procedure. This means that any documents related to national election observation selection are neither within the control nor in possession of the European Commission. Given that the European Commission does not hold any such 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

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