



EUROPEAN COMMISSION

LEGAL SERVICE
The Director-General

Brussels, 25th May 2021

By email

Mr Patrick Breyer
Rue Wiertz 60
1047 Brussels
Belgium

ask+request-9360-db1bfc62@asktheeu.org

Subject: Request for access to documents

Ref.: Your request of 21 April 2021 registered on 28 April 2021 under reference GestDem 2021/2758

Dear Mr Breyer,

I refer to your above-referenced request under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents,¹ by which you request “*access to a list of all opinions written by the Commission's Legal Service since 2019 which reflects the dates and subject matters of each opinion*”.

In reply to your application, I regret to inform you that the Commission's Legal Service is not in a position to deal with your request.

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. In this respect, the Court of Justice has confirmed in its judgment in Case C-491/15P² that “*the right of access to documents of the institutions applies only to existing documents in the possession of the institution concerned and [...] that Regulation No 1049/2001 may not be relied upon to oblige an institution to create a document which does not exist*”.

The Advance Record System (ARES) is the document management tool common to all Commission services where both the documents originating from the Commission and those received by the institution are registered. However, neither this system nor any other internal system of the Legal Service allows for a list to be obtained of the legal opinions written by it.

¹ OJ L 145, 31.05.2001, page 43.

² Judgment of the Court of Justice of 11 January 2017, Case C-491/15P, *Typke v. Commission*, ECLI:EU:C:2017:5, paragraph 31.

In the light of the above, the Service is unable to process your request regarding a list of all opinions written by the Commission's Legal Service since 2019 which reflects the dates and subject matters of each opinion.

Should you contest this position, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretariat-General at the address below:

European Commission
Secretariat-General
Unit C.1. 'Transparency, Document Management and Access to Documents'
BERL 7/076
B-1049 Brussels

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

[*signed electronically*]
Daniel CALLEJA CRESPO