

Director-General

Luxembourg, 24 March 2023

op.01(2023)3262267

Ref.: JD/HH

Subject: Your application for access to documents 2023/1565

Dear Mr Rath,

We refer to your request for access to European Commission documents, registered on 13 March 2023 under the above-mentioned reference number.

We regret to inform you that the Commission does not hold any documents that would correspond to the description given in your application. However, we provide hereafter additional information that we hope will be useful for you.

Your request was twofold:

- (1) *“Tenders Electronic Daily (<https://ted.europa.eu/TED/search/canReport.do>) provides information on contracts awarded by the EU from 2016 to 2023. I would like access to: Data on contracts awarded by the EU from 2010 to 2016. The format should be the same as the reports that can be downloaded on <https://ted.europa.eu/TED/search/canReport.do>.”*

On this point, I inform you that the page under the URL <https://ted.europa.eu/TED/search/canReport.do> contains information for the contracts awarded by EU Institutions starting in 2016 but this type of information and in this specific format does not exist for the previous years asked, namely 2010-2015.

However, any user of TED (which is publicly accessible) can take advantage of its provided search features to retrieve information for data published on TED since January 2014.

Furthermore, under the URL <https://ted.europa.eu/TED/misc/xmlPackagesDownload.do> (XML bulk downloads) a user (that has logged in to TED) can download all the notices published on TED since January 2011.

Finally, under <ftp://guest:guest@ted.europa.eu/daily-packages/> (access is free) a user can download notices published on TED even before January 2011.

Another means is to check the contract award notices on the website “data.europa.eu - The official portal for European data”; these datasets go back to 2006. (<https://data.europa.eu/data/datasets/ted-csv?locale=en>).

For all the options described above, you may process and filter the data according to your needs.

For your background, I would like to point out that the question regarding the possible status of information stored in databases as a document within the meaning of Regulation (EC) No 1049/2001 has been subject to an assessment by the General Court, which in its ruling in Case T-214/13 established that ‘in the event of an application for access designed to have the Commission carry out a search of one or more of its databases using search criteria specified by the applicant, the Commission is obliged, subject to the possible application of Article 4 of Regulation (EC) No 1049/2001, to accede to that request, if the requisite search can be carried out using the search tools which it has available for the database in question’ .

With this judgement, the General Court confirmed the previous judgment in the Dufour case, where the Court stated that ‘anything that can be extracted from a database by means of a normal or routine search may be the subject of an application for access’.

Furthermore, I would like to bring to your attention the most recent judgement in Case C-491/15P, where the Court of Justice took the position that the routine character of an operation which determines whether information extracted from a database is a document, is determined by whether the operation has been made available to final users for general use.

The specific data range you are asking for, in the specific format requested, can not be extracted from the relevant database by means of a routine search operation using the search tools available. For these reasons, the information requested is not included in any existing document.

(2) *“Tenders Electronic Daily (<https://ted.europa.eu/TED/search/canReport.do>) provides information on contracts awarded by the EU from 2016 to 2023. I would like access to: [...] Data on all the unsuccessful contract bidders from 2010 to 2023, including contract-specific information (URL notice, publication date, title of the notice) and bidder-specific information (name of the bidder(s) and size of the bid).”*

On this point, I regret to inform you that the TED database does not contain data on unsuccessful tenders.

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.

Given that no such documents, corresponding to the description given in your application, are held by the Commission, the Commission is not in a position to fulfil your request.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed to the Secretariat-General of the Commission within 15 working days upon receipt of this letter. You can submit it in one of the following ways:

by asking for a review via your portal¹ account (available only for initial requests submitted via the portal account),

or by mail:

European Commission

Secretariat-General

Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076

B-1049 Bruxelles

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

Yours faithfully,

(e-signed)

Hilde HARDEMAN

Director-General

¹ <https://www.ec.europa.eu/transparency/documents-request>