



EUROPEAN COMMISSION

Brussels, 18.9.2019
C(2019) 6841 final

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**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2019/1011**

Dear Mr Schneider,

I refer to your e-mail of 5 August 2019, registered on the same date, 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 documents² (hereafter ‘Regulation (EC) No 1049/2001’).

1. SCOPE OF YOUR APPLICATION

In your initial application of 18 February 2019 addressed to the Directorate-General for Research and Innovation you requested access to, I quote, ‘the full list of [...] stakeholders, who engaged in consultation on Open Access transformation, in general, as well as specifically on Plan S’. In this context, you referred to the reply provided by the European Commission to your previous application for access to documents³, which, I quote, ‘[...] speaks of Mr Smits’ “broad engagement with key stakeholders in spring 2018”’.

Your initial application was attributed to the European Political Strategy Centre of the European Commission for handling and reply.

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L 145 of 31.5.2001, p. 43.

³ Gestdem 2019/152.

In its initial reply of 13 March 2019, the European Political Strategy Centre of the European Commission informed you that it does not hold any document that would correspond to the description given in your application, that is ‘the list of stakeholders, who engaged in consultation on Open Access transformation, in general, as well as specifically on Plan S’.

You submitted your confirmatory application on 5 August 2019, asking for the review of that position.

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 fresh review of the reply given by the Directorate-General concerned at the initial stage.

In your confirmatory application, you argue that, I quote, ‘[the European Political Strategy Centre the European Commission] declared in [its initial reply] to [you] to hold no information about any consulted stakeholders (except of Frontiers)’. However, in your view, I quote, ‘Robert-Jan Smits claimed in autumn 2018 that he was advised by following publishers during preparation of Plan S: Elsevier, Springer Nature, Wiley, F1000 and Frontiers’. In this context, you provide the hyperlinks to the publically available materials that, in your view, confirm that Mr Smits indeed had exchanges with the above-mentioned publishers.

Please note, however, that documents concerning the exchanges or other interactions between Mr. Smits and the publishers listed in your confirmatory application (assuming that the European Commission indeed holds such documents), fall outside the scope of your initial application.

In your initial application, you requested access to one, specific document, namely ‘the full list of stakeholders’. Therefore, the initial reply of the European Political Strategy Centre the European Commission, as clearly indicated in that reply, relates only to that specific document.

Following your confirmatory application, the European Commission has carried out a renewed, thorough search for document(s) that would contain the information requested (that is ‘the list of stakeholders’, as described in your initial application). Following this renewed search, I confirm that the European Commission has not identified any such documents.

In line with the provisions of Article 2(3) and Article 10 of Regulation (EC) No 1049/2001, the right of access guaranteed by that Regulation applies only to existing documents in possession of the institution concerned.

Article 2(3) of Regulation (EC) No 1049/2001 provides that ‘[t]his Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union’.

Article 10(3) of the above-mentioned regulation provides that '[d]ocuments shall be supplied in an existing version and format [...]'.

In the light of the above, given that the European Commission holds no documents requested, it is not possible to handle your confirmatory 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 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
Ilze JUHANSONE
Acting Secretary-General