



EUROPEAN COMMISSION

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OUT OF SCOPE

France

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001¹**

Subject: Your confirmatory application for access to documents – Gestdem 2018/4739

Dear [REDACTED],

I refer to your email of 27 October 2018, registered on 29 October 2018, by which you lodge a confirmatory application in accordance with Article 7(2) of Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter ‘Regulation 1049/2001’). Please accept our apologies for this late reply.

In your initial application of 7 September 2018, you requested, with regard to ‘the Commission decision of April 1, 1992 (ref. IV / 32.450 — *Comités armatoriaux franco-ouest-africains*³)’, access to ‘all of the exchanges (i.e. emails, letters, memos, faxes and meeting notes) between the Directorate-General for Competition and all of the other Directorates-General involved relating to the decision – schedule of all external meetings of the Commission regarding the decision - Minutes of all external meetings regarding the decision (including with Bolloré) - documents listed in ANNEX IV of the decision.’

By letter of 18 October 2018, the Directorate-General for Competition informed you that it was not able to identify any documents as falling within the scope of your request.

In your confirmatory application you question the absence of any documents, especially regarding the documents listed in Annex IV of the above-mentioned decision.

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

² Official Journal L 145 of 31.05.2001, p. 43.

³ In English: ‘Franco-West African ship-owners’ committees’.

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 European 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 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 in Case C-127/13 P, 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’.⁴ The above-mentioned conclusion has been confirmed by the Court of Justice in Case C-491/15 P.⁵

Please be assured that during the assessment of your request, a thorough search for the documents was conducted. The European Commission attaches great importance to good document management in all its aspects. In 2002, the European Commission undertook the process of modernising its document management system. To this end, it adopted two decisions⁶ and their implementing rules that cover the whole life cycle of a document. Indeed, each Directorate-General or equivalent department assumes responsibility for ensuring the physical protection of files which fall within its sphere of responsibility until these responsibilities are transferred to the European Commission’s historical archives service. For your specific case, the *chef de file* or lead department which is responsible for the file is the Directorate-General for Competition.

For the purpose of assessing your request for documents, a search for the documents was not only conducted in the archives of Directorate-General for Competition but also in those of other Directorates-General. Please note that documents which are older than 25 years are transferred to the historical archives of the European Commission for the purposes of guaranteeing their long-term preservation. Therefore, a thorough search was conducted in the historical archives as well.

Following this renewed search and taking into account that the requested documents pertain to a decision which is nearly 27 years old, I confirm that they are no longer retrievable from the archives of the European Commission.

Furthermore, the European Commission has specifically examined the part of your request where you refer to the content of Annex IV ‘Accords armatoriaux ou documents tenant lieu d’accords armatoriaux’ of the above-mentioned decision. Please note in this respect that, whilst Annex IV lists ship-owners’ agreements or equivalent documents (‘accords armatoriaux ou documents tenant lieu d’accords armatoriaux’), the European Commission does not hold a copy of the documents listed.

⁴ Judgment of the Court of 2 October 2014, in Case C-127/13 P, *Strack v Commission*, (EU:C:2014:2250), paragraph 46.

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

⁶ Commission decision on Document management 2002/47/EC, ECSC, Euratom of 23 January 2002 and Commission decision on Electronic and digitised documents 2004/563/EC, Euratom of 7 July 2004.

Indeed, the fact that the documents to which you refer are listed in an Annex which forms part of a European Commission decision, does not imply automatically that the latter has them at its disposal. Furthermore, these documents pertain to agreements or equivalent documents, concluded between France and various African countries. Therefore, for the part of your request pertaining to the documents in Annex IV, I recommend that you address yourself to the respective authorities.

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 European Commission
Martin SELMAYR
Secretary-General