



EUROPEAN COMMISSION

Brussels, 14.5.2019
C(2019) 3794 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 2018/6497**

Dear [REDACTED],

I refer to your e-mail of 21 February 2019, registered on 8 March 2019, in which you submitted 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 letter of 30 October 2018 addressed to the President of the European Commission, you raised objections ‘based on Article 41 of the Charter of Fundamental Rights with regard to the handling of the submission of stakeholder comments in the TRIS database for Notification 2016/257/CZ (entitled Draft Implementing Decree of [date] on food supplements and the composition of foodstuffs) in the framework of Directive (EU) 2015/1535.’

In addition, you requested access to ‘all comments issued with regard to Notification 2016/257/CZ in TRIS database, including information as to how and when these comments were addressed and how, when and by whom the parties were informed about how the comments were addressed.’ On 21 November 2018, your application was

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

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

attributed to the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs for handling and reply.

In its initial reply of 7 February 2019, the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs informed you that it had identified 17 documents as falling within the scope of your request.

Taking into account the opinion of the authorities of Belgium, Spain, Denmark, Poland and the Czech Republic, which had been consulted pursuant to Article 4(4) and (5) of Regulation (EC) No 1049/2001, the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs granted wide partial access to documents 1, 7, 8, 9, 10 and 12. The redactions are based on the exception of Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

Furthermore, it informed you that documents 13, 14, 15 and 16 are publicly available on the TRIS website and sent you the corresponding link. Documents 2, 4, 7 and 11 originating from the European Commission were fully disclosed. Access to document 17 was refused based on the exception of Article 4(2), first indent (protection of commercial interests, including intellectual property) of Regulation (EC) No 1049/2001.

Through your confirmatory application, you do not contest the redactions that were made in the documents disclosed to you at the initial stage. You only question the completeness of the list of documents identified by the European Commission as falling under the scope of your application.

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.

Following your confirmatory application, the European Commission has carried out a renewed, thorough search for documents that would fall within the scope of your confirmatory application as described above.

Following this renewed search, I confirm that the European Commission does not hold any further documents in this sense.

Indeed, 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'.

In the light of the above, given that the European Commission does not hold any further such documents corresponding to the description given in your application, it is not possible to handle your 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 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
Martin SELMAYR
Secretary-General*