



EUROPEAN COMMISSION

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Brussels  
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Belgium

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE IMPLEMENTING  
RULES TO REGULATION (EC) No 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under Regulation  
(EC) No 1049/2001 - GESTDEM 2019/0880**

Dear [REDACTED],

I refer to your request of 4 March 2019, registered on 5 March 2019, 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 documents<sup>2</sup> (hereafter 'Regulation (EC) No 1049/2001').

**1. SCOPE OF YOUR REQUEST**

In your initial application of 15 February 2019, addressed to the Directorate-General for Human Resources and Security, you requested access to the 'document generated by DG HR on or after 18/02/2019: 'Officials, Temporary Agents and Contract Agents by First Nationality and Grade', *part of the HR Statistical Bulletin for the European Commission*' (emphasis added).

The Directorate-General for Human Resources and Security informed you on 4 March 2019 that '[t]his Statistical Bulletin is published on a quarterly basis and therefore the second publication with reference date 01/04/2019 will be generated in the beginning of April 2019.'

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<sup>1</sup> Official Journal L 345 of 29.12.2001, p. 94.

<sup>2</sup> Official Journal L 145 of 31.5.2001, p. 43.

In your confirmatory application, you request the Secretary-General ‘to annul [...] the contested decision [of Directorate-General for Human Resources and Security]’ and to provide you with full access to the document requested in your initial application. You indicate the following reasons:

- ‘(1) The contested decision does not give any reasons for refusal based on the exceptions explicitly and exhaustively provided for in Regulation 1049/2001.
- (2) The contested decision does not inform me of my right to submit a confirmatory application to the Secretary-General of the European Commission within 15 working days of receiving the negative reply.
- (3) The contested decision is not signed by the Director-General of DG HR and Security.’

## **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 this review, I can inform you that the European Commission grants full access to the requested document. You may access the requested document under the following link:

[https://ec.europa.eu/info/about-european-commission/organisational-structure/commission-staff\\_en](https://ec.europa.eu/info/about-european-commission/organisational-structure/commission-staff_en).<sup>3</sup>

### **2.1. The existence of the requested document**

In your initial application, you requested access to a document that is to be generated by the European Commission. Although Article 3(a) of Regulation (EC) No 1049/2001 covers in principle only existing documents, the document that you requested to be generated is deemed as an extraction of information from an electronic database, for which the case-law of the Court of Justice established specific rules.<sup>4</sup>

The Court of Justice already confirmed that ‘[...] all information which can be extracted from an electronic database by general use through pre-programmed search tools, even if that information has not previously been displayed in that form or ever been the subject matter of a search by the staff of the institutions, must be regarded as an existing document.’<sup>5</sup>

Following the review of the initial decision, it was confirmed that the requested document can be created easily, with the help of pre-programmed search tools.

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<sup>3</sup> Please click on ‘Download’ in the field ‘Statistical Bulletin - HR - April 2019’ on this page, then select the file: ‘20190401\_FirstNationalityAndGrade + FirstNationalityGradeGender.pdf’ from the 7-zip package.

<sup>4</sup> Judgment of the Court of 11 January 2017, *Typke v Commission*, C-491/15 P, EU:C:2017:5, paragraph 31.

<sup>5</sup> Ibid, paragraph 37.

The European Commission created the requested document with the reference date of 01 April 2019, which satisfies the condition you set in your initial application, namely, the document needs to be created ‘on or after 18/02/2019’.

## **2.2. Signature of the initial decision by the Director-General and information on the right to submit a confirmatory application**

The reply you received on 4 March 2019 from the Directorate-General for Human Resources and Security was not signed by the Director-General of Directorate-General for Human Resources and Security,<sup>6</sup> as it is provided as the main rule under Article 3, third paragraph, of the Implementing Rules to Regulation (EC) No 1049/2001. Furthermore, the initial reply did not inform you of your right to make a confirmatory application as per Article 3, fourth paragraph, of the Implementing Rules to Regulation (EC) No 1049/2001.

I note, however, that none of the above circumstances prevented you from exercising your rights and completing the confirmatory application procedure under Regulation (EC) No 1049/2001. Thus, I understand that your rights under Regulation (EC) No 1049/2001 did not suffer any harm.

Yours sincerely,



*For the Commission  
Martin SELMAYR  
Secretary-General*

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<sup>6</sup> Article 3, third paragraph, of the Implementing Rules to Regulation (EC) No 1049/2001, ‘[t]he applicant shall be informed of the response to his application either by the Director-General or the head of department concerned, or by a Director designated for this purpose in the Secretariat-General [...]’.