



EUROPEAN COMMISSION

Brussels, 17.6.2019  
C(2019) 4531 final

[REDACTED]  
[REDACTED]  
10600 Plasencia  
España

**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 2019/1719 and  
2019/2160**

Dear [REDACTED],

I refer to your e-mail of 10 May 2019, registered on 13 May 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 documents<sup>2</sup> (hereafter 'Regulation (EC) No 1049/2001').

**1. SCOPE OF YOUR APPLICATION**

In your initial application of 21 March 2019, you requested access to '[...] all correspondence between the [European] Commission and the French Government (and vice-versa) concerning CHAP file (2017)1515, both with regard to the "Molière clause" as to the "interpretation clause", as well as any other correspondence between the parties concerned by this case, included in the file'.

Your initial application fall under the competence of two different Directorates-General of the European Commission. Your application was therefore attributed for handling and reply to:

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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.

- Directorate-General for Employment, Social Affairs and Inclusion (registered under reference number GESTDEM 2019/1719);
- Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, (registered under reference number GESTDEM 2019/2160).

With regard to the application registered as GESTDEM 2019/1719, the Directorate-General for Employment, Social Affairs and Inclusion provided its initial reply on 6 May 2019. In that reply, it informed you that it does not hold any documents that would fall under the scope of your application. Indeed, according to that reply, '[t]he Directorate General for Employment, Social Affairs and Inclusion had to examine the issue of the compatibility of the so-called "Molière clause" with the EU rules on the posting of workers, in particular when assessing the complaint submitted by you on this subject (CHAP (2017)1515)'.

However, '[...] there have been no correspondence or written contacts between [the] services [of the Directorate-General for Employment, Social Affairs and Inclusion] and the French authorities on this subject, since such correspondence or written contacts were not considered necessary for the analysis of the compatibility of the "Molière clause" with the legislation of the EU.'

On 10 May 2019, you submitted the confirmatory application, in which you contested the position of the Directorate-General for Employment, Social Affairs and Inclusion. In that application, you refer to the text of the reply of 6 May 2019 and emphasise the expression 'in particular' used by that Directorate-General in the sentence in which it informed you that it examined the compatibility of the so-called 'Molière clause' with the EU legislation. The use of that expression, which in your view '[...] is generally used to specify that there have been other types of investigations and consequently, there are doubts whether the above-mentioned Directorate General (given that it is not clear) has not had written contacts with the French authorities in other types of files [...]'

You underline in your confirmatory application that such (other) written contacts fall under the scope of your initial application.

With regard to the application registered as GESTDEM 2019/2160, as you did not receive a reply from that Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs within the statutory time limits, your confirmatory application of 10 May 2019 was submitted against the (implied) negative decision concerning your request for access to the documents requested.

Nonetheless, I note that on 20 May 2019, the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs provided its initial reply. Consequently, the Secretariat-General of the European Commission on 3 June 2019 informed you that your confirmatory application against the (implied) negative decision of your application GESTDEM 2019/2160 has become devoid of purpose as you have received a reply to your initial application for access to documents.

## **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 such documents. Following this renewed search, I confirm that the European Commission has not identified any document falling under such defined scope of your application.

Indeed, there was no exchange of correspondence between the European Commission and the French authorities in the context of the investigation concerning ‘Molière clause’ in the context of the complaint CHAP (2017)1515 or any other context.

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 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*