



EUROPEAN COMMISSION

Brussels, 18.6.2019  
C(2019) 4581 final

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Madrid  
28017  
Spain

**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 – GESTDEM  
2019/2490**

Dear ██████████,

I am writing in reference to your email of 9 May 2019, registered on 10 May 2019, by which you lodge 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’).

Through your initial application of 24 April 2019, you requested access to ‘[d]ocumentos e informes sobre la exportación de aceite de oliva de la UE durante los años 2017 y 2018.’

By letter of 7 May 2019, the Directorate-General for Agriculture and Rural Development informed you that the documents you requested are public and can be found under the following links:

- [https://ec.europa.eu/agriculture/sites/agriculture/files/olive-oil/prices/intra-trade/in\\_2011-2018.xlsx](https://ec.europa.eu/agriculture/sites/agriculture/files/olive-oil/prices/intra-trade/in_2011-2018.xlsx) concerning intra-EU exports; and
- [https://ec.europa.eu/agriculture/sites/agriculture/files/olive-oil/prices/extra-trade/olive-oil-monthly-trade-eurostat\\_en.xlsx](https://ec.europa.eu/agriculture/sites/agriculture/files/olive-oil/prices/extra-trade/olive-oil-monthly-trade-eurostat_en.xlsx) concerning exports outside the EU.

In your confirmatory application you question the completeness of the initial reply. You take the view that additional documents and reports exist in relation to your request.

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

<sup>2</sup> Official Journal L145 of 31.05.2001, p. 43

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 Commission does not hold any further documents that would correspond to the description given in your application in addition to those that have already been disclosed to you.

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'.

Thus, as specified in the above Article, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

Accordingly, drawing up additional documents in relation to the export of olive oil from the EU mentioned in your initial request would result in the creation of a new document, which, as explained above, does not exist.

The Court has confirmed in Case C-491/15 P<sup>3</sup> that, '[...] an application for access that would require the Commission to create a new document, [...], falls outside the framework of Regulation No 1049/2001.'

The Court has also ruled in Case T- 468/16<sup>4</sup> that the statement of the European Commission indicating that the requested document(s) do(es) not exist should be considered as correct unless the applicant can rebut this statement by relevant and consistent evidence. In your confirmatory application, I did not find any evidence that would suggest the existence of additional document(s) relating to the subject-matter of your initial application.

In the light of the above, given that the European Commission holds no documents other than the ones already identified, it is not possible to handle your application.

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 Commission*  
*Martin Selmayr*  
*Secretary-General*

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<sup>3</sup> Judgment of the Court of Justice of 11 January 2017, *Typke v Commission*, C-491/15 P, EU:C:2017:5, paragraph 31.

<sup>4</sup> Judgment of the General Court of 23 April 2018, *Verein Deutsche Sprache v Commission*, T-468/16, EU:T:2018:207, paragraph 37., confirmed by the order of the Court of Justice of 30 January 2019, *Verein Deutsche Sprache eV v European Commission*, C-440/18 P, EU:C:2019:77.