



EUROPEAN COMMISSION

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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 2019/2556**

Dear [REDACTED], dear [REDACTED],

I refer to your letter of 3 July 2019, registered on 4 July 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 documents² (hereafter ‘Regulation (EC) No 1049/2001’).

1. SCOPE OF YOUR REQUEST

In your initial application of 29 April 2019, addressed to the Directorate-General for Agriculture and Rural Development, you requested access to ‘[a]ll individual payment records in Euros paid out to recipients under the Common Agricultural Policy and recorded in The Clearance of Accounts Audit Trail System pursuant to Commission Regulation (EC) No 2390/1999 (as amended) between January 1, 2010 and the present day. Format: Data in an electronic format such as delimited data sets, database file, spreadsheet or other non-proprietary electronic format.’

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

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

The European Commission did not identify any documents as falling under the scope of your request.

In its initial reply of 13 June 2019, Directorate-General for Agriculture and Rural Development refused your request by stating that ‘the Commission does not hold any documents that would correspond to the description given in your application.’

In your confirmatory application, you request a review of this declaration. You support your request with detailed arguments, which I will address in the corresponding sections below to the extent necessary.

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 regret to inform you that I have to confirm the initial decision of Directorate-General for Agriculture and Rural Development that the document you request cannot be considered as existing document under Regulation (EC) No 1049/2001, for the reasons set out below.

Pursuant to point (a) of Article 3 of Regulation (EC) No 1049/2001, the term ‘document’ is defined as ‘any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audio-visual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility’.

In accordance with Article 2(3) of Regulation (EC) No 1049/2001, ‘[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.’

Both in your initial and confirmatory application, you requested access to a document that is to be generated from a database maintained by the European Commission.

As the Court of Justice confirmed, not all extractions from a database can be subject to an access to document request: ‘[a]dmittedly, an electronic database may enable the extraction of any information contained therein. However, the possibility that a document may be created from such a database does not lead to the conclusion that the document concerned must be regarded as an existing document for the purposes of Regulation No 1049/2001.’³

When generating a document from a database, the Commission must decide, essentially, whether the requested extraction of data is to be considered a creation of a new document or not. As the Court of Justice established, ‘... the right of access to documents of the institutions applies only to existing documents in the possession of the institution concerned and that Regulation No 1049/2001 may not be relied upon to oblige an

³ Judgment of the Court of Justice of 11 January 2017, *Typke v Commission*, C-491/15 P, EU:C:2017:5, paragraph 30.

institution to create a document which does not exist. ... It follows that ... an application for access that would require the Commission to create a new document, even if that document were based on information already appearing in existing documents held by it, falls outside the framework of Regulation No 1049/2001.⁴ In other words, the European Commission should decide whether the requested extraction from its database is considered as a creation of a new document.

The case law of the Court of Justice established a benchmark to this end. According to the Court of Justice, ‘... as far as electronic databases [such as the Clearance of Accounts Audit Trail System, hereafter ‘CATS’] are concerned, the distinction between an existing document and a new document must be made on the basis of a criterion adapted to the technical specificities of those databases and in line with the objective of Regulation No 1049/2001, whose purpose, as is apparent from recital 4 and Article 1(a) thereof, is ‘to ensure the widest possible access to documents’.⁵ And while ‘[i]t is not disputed that the information contained in databases, depending on the structure and the restrictions imposed by the programming of such databases, may be regrouped, linked and presented in different ways using programming languages, ... the programming and IT management of such databases are not included among the operations carried out in the context of general use by final users. Those users access information contained in a database by using pre-programmed search tools. Those tools enable them to perform standardised operations easily in order to display the information which they usually need. A substantial investment on their part is, in general, not required in that context.’⁶

Consequently, ‘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.’⁷

This means that, ‘[o]n the other hand, ... any information whose extraction from a database calls for a substantial investment must be regarded as a new document and not as an existing document.’⁸

In the present case, in order to obtain the requested extraction, the European Commission should develop a new ORACLE SQL script with the appropriate search parameters and test for each request, following the analysis of the requirements. The outcome should then be stored in a text file and has to be analysed with the software tool ACL (Audit Command Language). This analysis and any related cross-checks have to be done manually. Thus, the requested extraction from the CATS database would require considerable new programming.

Such a substantial investment in order to extract the requested data would amount to the creation of a new document. As the Court of Justice confirmed, ‘... the operations which

⁴ Idem, paragraph 31.

⁵ Idem, paragraph 35.

⁶ Idem, paragraph 36.

⁷ Idem, paragraph 37.

⁸ Idem, paragraph 39.

the programming of new SQL queries would involve were not comparable to a normal or routine search in the database concerned, carried out using the search tools available to the Commission in respect of that database and that, therefore, the information requested would have required the creation of a new document.’⁹

However, as mentioned above, ‘an application for access that would require the Commission to create a new document, even if that document were based on information already appearing in existing documents held by it, falls outside the framework of Regulation No 1049/2001.’¹⁰

Given that your request falls outside of the scope of Regulation (EC) No 1049/2001, the European Commission is not in a position to fulfil your request.

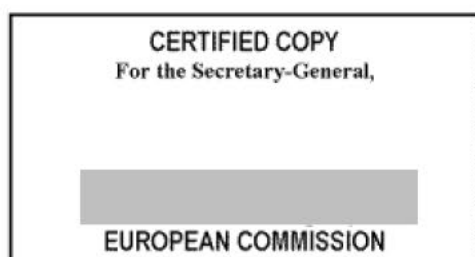
Finally, as indicated in the initial reply of 13 June 2019, please note that the Directorate-General for Agriculture and Rural Development maintains several websites from where you can collect information in relation payments under the Common Agricultural Policy of the European Union:

- beneficiaries of CAP payments:
https://ec.europa.eu/agriculture/cap-funding/beneficiaries_en
- distribution of direct aid to farmers:
https://ec.europa.eu/agriculture/cap-funding/beneficiaries/direct-aid_en
- CAP payments under shared management (published on Member State websites):
https://ec.europa.eu/agriculture/cap-funding/beneficiaries/shared_en

3. MEANS OF REDRESS

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



⁹ Idem, paragraph 47.

¹⁰ Idem, paragraph 31.