



EUROPEAN COMMISSION
Secretariat-General

The Secretary-General

Brussels,
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By registered mail:

Mr Klaus Zinser

[REDACTED]
Germany

Copy by email:
[REDACTED]

**DECISION OF THE SECRETARY GENERAL ON BEHALF OF THE COMMISSION PURSUANT
TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2014/5510**

Dear Mr Zinser,

I refer to your letter of 26 December 2014, registered on 31 December 2014, 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 (*Regulation 1049/2001*).

1. SCOPE OF YOUR REQUEST

In your initial application of 18 November 2014,³ addressed to the Directorate-General for Justice (DG JUST), you requested access to *the 28 reports given to the EU Commission in preparation of the Brussels IIa Regulation/Consultation (Regulation 2201/2003) review*.

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

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

³ You qualified this access to documents request as a Freedom of Information (FOI) request initially.

In its initial reply of 11 December 2014, DG JUST identified 28 field studies (contributions) corresponding to your request. These field studies were prepared by external experts on request of an external consultant who had been contracted by the Commission in the framework of an Impact Assessment study for the review of Brussels IIa Regulation (Regulation EC 2201/2003). DG JUST indicated that these contributions cannot be considered as documents in the meaning of Article 2(3) of Regulation 1049/2001, insofar as they are not in the possession of the Commission.

Through your confirmatory application you request a review of this position.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Commission service concerned at the initial stage. Following this review, I regret to inform you that the Commission is not in possession of the requested documents.

The documents in question were collected by an external contractor with the help of national experts in the framework of the preparation of a global evaluation study. The external contractor compiled information from all Member States concerned to facilitate the drafting process and to ensure the uniformity and comparability of the structure and contents of the main study, which was to feed into the Impact Assessment. The Member States' authorities were not involved in drafting the documents, nor consulted on them. The external contractor used those documents for internal purposes, as working documents for the purpose of elaborating the study ordered by the Commission, which has not been finalised yet. The contractor has not shared these working documents with the Commission, nor has that been envisaged.

These documents are therefore merely part of the internal working methodology of the external contractor and were not ordered by the Commission, the latter being only interested in the final report. Indeed, the Terms of Reference for the external contractor, regarding the study on the assessment of the regulation and the policy options for its amendment, do not even mention them. The Commission is not in possession of the contributions and clearly cannot decide on granting access to documents which do not belong to it.

While a draft final study report is currently under revision, it does not include any country-specific chapters. The final report will be published as soon as the review of the Regulation is finished. This can be expected for the end of 2015. The contributions that were used to gain information for the study will not be included for the reasons stated above.

In light of these elements, I confirm that the documents requested are not held by the Commission and that consequently the Commission cannot grant access to them.

I would however like to draw your attention to a different report in which you might be interested, and which is available since 15 April 2014: the report on application of the Brussels IIa Regulation.⁴

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,



Catherine Day

⁴ http://ec.europa.eu/justice/civil/files/matrimonial_act_part1_v3_en.pdf.