



EUROPEAN COMMISSION

Brussels, 27.5.2019
C(2019) 4100 final

Mr Alvaro Merino
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28017 Madrid
Spain

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) NO 1049/2001¹**

**Subject: Your confirmatory applications for access to documents under Regulation
(EC) No 1049/2001 – GESTDEM 2019/1644 and 2019/1646**

Dear Mr Merino,

I refer to your emails of 5 and 11 April 2019, registered on 5 and 12 April 2019, respectively, in which you submit a confirmatory applications 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’).

On 14 March 2019, you submitted an initial application for access to documents under Regulation (EC) No 1049/2001 to the Directorate-General for Economic and Financial Affairs, in which you requested access to ‘a list of lobby meetings held by the commissioner in charge of Economic and Financial Affairs, Pierre Moscovici, or any other Member of its Cabinet with any organisations representing churches and/or religious communities since 2014 onwards, including all e-mails, minutes, reports or any other briefing papers related to all those meetings’. This application was registered under reference number GESTDEM 2019/1646.

Through your another initial application for access to documents under Regulation (EC) No 1049/2001 of 19 March 2019, addressed to the Directorate-General for Taxation and Customs Union, you requested access to ‘a list of lobby meetings held by the commissioner in charge of Taxation and Custom Union, Pierre Moscovici, or any other Member of its Cabinet with any organisations representing churches and/or religious communities since 2014 onwards, including all e-mails, minutes, reports or any other briefing papers related to

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

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

all those meetings'. This application was registered under reference number GESTDEM 2019/1644.

In their initial replies dated 5 and 9 April 2019, both Directorates-General informed you that:

- neither Commissioner Moscovici nor any Member of his Cabinet had meetings with lobbyists representing churches and/or religious communities since 2014 onwards;
- they do not hold any documents falling within the scope of your requests.

In your confirmatory applications, you question the absence of any meetings and any documents.

Against this background, the European Commission has carried out a renewed, thorough search for meetings and documents that would fall within the scope of your confirmatory applications as described above.

Following this renewed search, I confirm that:

- neither Commissioner Moscovici nor any Member of his Cabinet had meetings with lobbyists representing churches and/or religious communities since 2014 onwards;
- the European Commission does not hold any documents that would correspond to the description given in your applications.

Indeed, as specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution. I would like to refer in this respect to the judgment of the Court of Justice in Case C-127/13 P (*Strack v European Commission*), according to which '[n]either Article 11 of Regulation 1049/2001 nor the obligation of assistance in Article 6(2) thereof, can oblige an institution to create a document for which it has been asked to grant access but which does not exist'.³

The above-mentioned conclusion has been confirmed in Case C-491/15 P (*Typke v European Commission*), where the Court of Justice held that 'the right of access to documents of the institutions applies only to existing documents in the possession of the institution concerned and [...] Regulation No 1049/2001 may not be relied upon to oblige an 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

Furthermore, the General Court held in Case T-468/16 (*Verein Deutsche Sprache v European Commission*) that there exists a presumption of lawfulness attached to the

³ Judgment of the Court of Justice of 2 October 2014, *Strack v European Commission*, C-127/13 P, EU:C:2014:2250, paragraph 46.

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

declaration by the institution asserting that documents do not exist.⁵ This presumption continues to apply, unless the applicant can rebut it by relevant and consistent evidence.⁶ The Court of Justice, ruling on an appeal in Case C-440/18 P, has recently confirmed these conclusions.⁷

Given that the European Commission does not hold any documents corresponding to the description given in your application, it is not in a position to fulfil your requests.

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

⁵ Judgment of the General Court of 23 April 2018, *Verein Deutsche Sprache v European Commission*, T-468/16, EU:T:2018:207, paragraphs 35-36.

⁶ *Ibid.*

⁷ Order of the Court of Justice of 30 January 2019, *Verein Deutsche Sprache v Commission*, C-440/18P, here the EU:C reference is missing, can you pls add it? paragraph 14.