



EUROPEAN COMMISSION

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**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 2019/866**

Dear Ms Fiedler,

I refer to your letter of 24 April 2019, registered on the same day, 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 documents<sup>2</sup> (hereafter 'Regulation (EC) No 1049/2001').

**1. SCOPE OF YOUR REQUEST**

In your initial application of 14 February 2019, addressed to the Directorate-General for Communications Networks, Content and Technology, you requested access to:

- ‘ - all communication sent to and received from Member States and their National Regulatory Authorities to prepare the implementation report of the Regulation (EU) 2015/2120 (Open Internet Regulation) which is due on 30 April 2019;
- all communication sent to and received from Member States and National Regulatory Authorities to follow upon annual reporting obligations under the Regulation (EU) 2015/2120 (Open Internet Regulation)’.

The European Commission has identified a total of 90 documents (49 email exchanges with annexes) as falling under the scope of your request, which are listed in Annex 1.

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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.

In its initial reply of 23 April 2019, the Directorate-General for Communications Networks, Content and Technology refused access to these documents based on the exceptions of Article 4(1)(b) (protection of privacy and the integrity of the individual), and Article 4(3), first subparagraph (protection of the ongoing decision-making process) of Regulation (EC) No 1049/2001.

In your confirmatory application, you request a review of this position. You state that you do not request access to the personal data contained in the documents, hence they will fall outside the scope of the confirmatory application. However, you note that, in your view, the exception of Article 4(3), first subparagraph (protection of the ongoing decision-making process) of Regulation (EC) No 1049/2001 is no longer applicable since the decision-making process is now closed.

## **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.

Since some of these documents originate from third parties, the Secretariat-General consulted the national authorities of Greece, Cyprus, United Kingdom and Luxembourg in accordance with Article 4(4) and 4(5) of Regulation (EC) No 1049/2001 with a view of assessing whether an exception in paragraph 1 or 2 of Article 4 of Regulation (EC) No 1049/2001 could be applicable. The national authorities of Greece, Cyprus and United Kingdom did not have any objection against the disclosure of their respective documents. The European Commission did not receive a reply from the national authorities of Luxembourg.

Following this review and taking into consideration the results of the consultation, I can inform you that wide partial access is granted to 90 documents (emails and annexes) subject to the redaction of personal data based on Article 4(1)(b) (protection of the privacy and integrity of the individual) of Regulation (EC) No 1049/2001, as explained previously in the initial reply of 23 April 2019.

### 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*  
*Martin SELMAYR*  
*Secretary-General*



Enclosures: (91)