



EUROPEAN COMMISSION

Brussels 21.8.2024
C(2024) 6018 final

Mr Jan Daalder

**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 – EASE 2024/3719**

Dear Mr Daalder,

I refer to your correspondence of 5 August 2024, registered on 6 August 2024, in 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 documents² (hereafter 'Regulation (EC) No 1049/2001').

1. Scope of your Request

In your initial application of 10 June 2024, registered the day after, you requested access to, I quote:

'all documents from 15/03/2023 – including but not limited to (draft versions of) minutes, (hand-written) notes, audio recordings, verbatim reports, operational conclusions, briefings, e-mails, attachments, letters, text messages, phone call notes, (powerpoint) presentations – related to the decision of several Dutch regional water authorities (in Dutch: 'waterschappen') to let farmers use landscape features owned by the regional water authorities to apply for payments under the eco-scheme of the Common Agriculture Policy (CAP)'.

Given the subject matter of your application, its processing was attributed to the Directorate-General for Agriculture and Rural Development (hereinafter 'DG AGRI').

In its initial reply of 22 June 2024, registered on the same day, DG AGRI informed you that it does not hold any documents that would correspond to the description given in your application.

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

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

In your confirmatory application, you request a review of this position, and question the absence of any documents.

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 review of the reply given by the Directorate-General concerned at the initial stage.

Against this background, the European Commission has carried out a renewed thorough search for the documents requested.

Following this review, the Secretariat-General confirms that the Commission does not hold any documents that would correspond to the description given in your application.

This conclusion is in line with Article 2(3) of Regulation (EC) No 1049/2001 which holds that the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

The Secretariat-General would like to refer in this respect to the judgment of the Court of Justice in Case C-127/13 P (*Strack v 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 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 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 Regulation No 1049/2001’⁴.

The General Court held in Case T-468/16 (*Verein Deutsche Sprache v Commission*) that there exists a presumption of lawfulness attached to the declaration by the institution asserting that documents do not exist⁵. This presumption continues to apply unless the applicant can rebut it by relevant and consistent evidence⁶. The Court of Justice, ruling on an appeal in Case C-440/18 P, has confirmed these conclusions⁷.

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

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

⁵ Judgment of the General Court of 23 April 2018, *Verein Deutsche Sprache v Commission*, T-468/16, ECLI: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-440/18 P, ECLI:EU:C:2019:77, paragraph 14.

The General Court held in Case T-468/16 (*Verein Deutsche Sprache v Commission*) that a mere suspicion that there must be [more] documents does not suffice to put in question the presumption of legality of the institution's statement⁸.

In your confirmatory application, you state that 'a source with knowledge of the matter, tells [you] there has in fact been contact between the Commission and the Dutch authorities in Brussels and The Hague and the water boards'. Please note that DG AGRI's counterpart in the Netherlands is the managing authority⁹, and not the water boards. In fact, DG AGRI does not work with the water boards in the context of the management of the CAP plan.

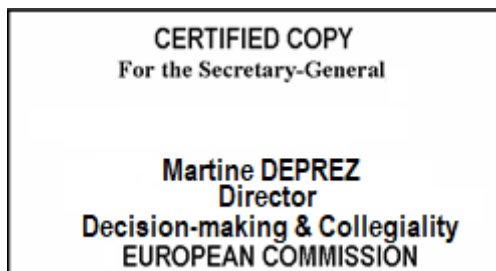
As such, your arguments do not amount to relevant and consistent evidence that would rebut the presumption of lawfulness attached to the declaration by the Commission that it does not hold any documents that would correspond to the description given in your application.

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

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
Ilze JUHANSONE
Secretary-General

⁸ *Ibid*, paragraph 37.

⁹ Article 123 of Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans.