



EUROPEAN COMMISSION

Brussels, 27.4.2023
C(2023) 3006 final

Ms Joan Sejer
Prins Knuds vej 7
DK-8240 Risskov
Denmark

**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 – EASE 2022/7137

Dear Ms Sejer,

I am writing in reference to your email of 2 March 2023, registered on the same day, by 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

Through your initial application of 9 December 2022, addressed to the Directorate-General for Financial Stability, Financial Services and Capital Markets Union of the Commission, you requested access to:

‘File number: FISMA/02929. We request insight into which officials at DG Fisma have been handling the above file number. How many meetings have been held, and how many external people have been visiting, filed, and involved meetings regarding the file concerned? The information is requested prior to filing a claim of compensation for damages due to failed advisory responsibility.’

As your application was not sufficiently precise to enable the Directorate-General for Financial Stability, Financial Services and Capital Markets Union to identify any

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

² Official Journal L145, 31.05.2001, p. 43.

corresponding documents held by the Commission, on 14 December 2022, in line with Article 6(2) of Regulation (EC) No 1049/2001, you were invited to provide more detailed information on the documents you requested, such as references, dates or periods during which the documents would have been drawn up, persons or bodies who drafted the documents etc.

In your reply to the aforementioned request for clarification, dated 21 December 2022, you specified that you:

'request of insight to documentation on Fisma file Code: FISMA/02929 [and] full insight to meetings held at DG Fisma, and participants, to retrieve our funds and fees paid [...] full insight in the procedure of collecting our debt, and final status of the file'.

In its letter of 31 January 2023, the Directorate-General for Financial Stability, Financial Services and Capital Markets Union informed you that it did not identify any relevant documents held by the Commission that would fall within the scope of your request.

In your confirmatory application, you question the absence of any documents held by the Commission and corresponding to the description of documents requested.

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 of the European Commission conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage, without constraint from previous statement of position by the competent services.

Against this background, the Commission has carried out a renewed, thorough search for the documents requested. Following this renewed search, the Secretariat-General confirms that the Commission does not hold any documents that would correspond to the description given in your application.

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. In this respect, your attention is drawn 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 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

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.

asserting that documents do not exist⁴. This presumption continues to apply, unless the applicant can rebut it by relevant and consistent evidence⁵. In this regard, a mere suspicion that there must be a document does not suffice to put in question the presumption of legality of the institution's statement⁶. The Court of Justice, ruling on an appeal in Case C-440/18 P, has confirmed these conclusions⁷.

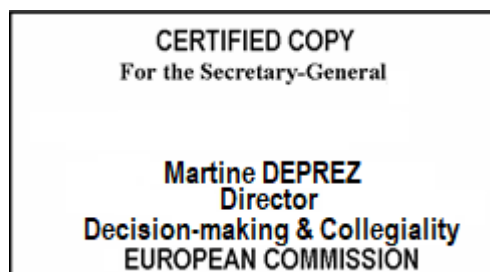
Given that the Commission does not hold any such documents corresponding to the description given in your application, it is not in a position to fulfil your request.

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



⁴ Judgment of the General Court of 23 April 2018, *Verein Deutsche Sprache v Commission*, T-468/16, EU:T:2018:207, paragraphs 35-36.

⁵ *Ibid.*

⁶ *Ibid.*, paragraph 37.

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.