



EUROPEAN COMMISSION

Brussels, 26.8.2025  
C(2025) 5954 final

Mr Arun Dohle

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 11 OF THE DETAILED  
RULES FOR THE APPLICATION OF REGULATION (EC) No 1049/2001, ANNEXED TO THE  
RULES OF PROCEDURE OF THE COMMISSION<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under Regulation (EC)  
No 1049/2001 – EASE 2024/6975**

Dear Mr Dohle,

I refer to your confirmatory application registered on 19 June 2025, lodged 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’) for the case mentioned in subject.

**1. SCOPE OF YOUR REQUEST**

In your initial application registered on 16 December 2024, you requested access to ‘a document that contains de position of the NGO Care France related the – in their own words – “Le Scandale de l’Interdiction de l’adoptions internationale des enfants roumains abandonnes”.’

In the absence of an initial reply from the Directorate-General for Enlargement and Eastern Neighbourhood within the time limit prescribed by Regulation (EC) No 1049/2001, you introduced a confirmatory application for lack of initial reply on 11 February 2025.

In its initial reply communicated to you on 18 June 2025, the Directorate-General for Enlargement and Eastern Neighbourhood identified 3 documents falling within the scope of your application:

- Document 1: Note ‘Le scandale de l’interdiction de l’adoption internationale des enfants roumains abandonnés’, reference CABSPIDLA/2005/A/2169;

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<sup>1</sup> OJ L, 2024/3080, 5.12.2024, ELI: <http://data.europa.eu/eli/dec/2024/3080/oj>.

<sup>2</sup> OJ L 145, 31.5.2001, p. 43-48, ELI: <http://data.europa.eu/eli/reg/2001/1049/oj>.

- Document 2: Lettre du 23 Février 2006 en réponse à CARE France sur la note ‘Le scandale de l’interdiction de l’adoption internationale des enfants roumains abandonnés’, reference ELARG/A3/101072;
- Document 3: Adonis, registration fiche, reference CABSPIDLA/2005/A/2169.

In its initial reply, the Directorate-General for Enlargement and Eastern Neighbourhood provided a partial access to the documents, subject to redactions on the basis of Article 4(1)(b) (protection of the privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

In your confirmatory application of 18 June 2025, you requested a review of the initial reply. You notably ‘urge the Commission to:

- Provide the requested document in full, with minimal and strictly justified redactions, as required by Regulation (EC) No 1049/2001;
- Disclose the annexes, as explicitly requested, with clear reasoning for any redactions;
- Provide the registration sheets for Commissioners Frattini, Rehn, and Barrot, or a detailed explanation for their absence;
- Reassess the application of exceptions under Regulation (EC) No 1049/2001, ensuring that any refusal to disclose is narrowly construed and justified in light of the overriding public interest in transparency’.

## **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 Commission conducts a review of the reply issued by the Directorate-General concerned at the initial stage.

First and foremost, as concerns the registration sheets for Commissioners Frattini, Rehn, and Barrot, the Secretariat-General would like to inform you that access to those documents cannot be granted at this confirmatory stage.

Indeed, the case-law of the Court of Justice of the EU has established that a confirmatory application under Article 7(2) of Regulation (EC) No 1049/2001 can only be submitted to invite the European Commission to reconsider its initial position on the documents already requested, not to submit an application for access to additional documents<sup>3</sup>.

In the present case, the Secretariat-General concludes that requesting access to documents only identified at confirmatory stage (the additional registration sheets) would amount to submitting a new initial application. Your initial request very clearly referred only to the registration by the Cabinet of former Commissioner Spidla, and access to the corresponding registration sheet has been granted to you subject to the redaction of personal data as mentioned above.

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<sup>3</sup> Judgment of the General Court of 10 February 2021, *XC v European Commission*, T-488/18, EU:T:2021:76, paragraph 168.

Therefore, your request for access to the registration sheets for Commissioners Frattini, Rehn, and Barrot will be registered separately as a new initial request and will be processed by the service responsible in accordance with Article 7 of Regulation (EC) 1049/2001.

Secondly, as regards your claim of incompleteness of document 1, notably concerning the annexes therein, the Secretariat-General would like to inform you that a new search for a complete version of this document has been carried out. Unfortunately, no such version could be traced back (see Section 2.1 below).

Finally, as concerns the version of the documents identified at initial level, following a detailed review, the Secretariat-General is pleased to inform you that wider partial access can be granted to document 1, subject to the redaction of personal data therein on the basis of Article 4(1)(b) (protection of the privacy and the integrity of the individual) of Regulation (EC) No 1049/2001 (see Section 2.2 below).

However, regarding documents 2 and 3, the Secretariat-General must confirm the assessment of the Directorate-General for Enlargement and Eastern Neighbourhood. The level of partial access granted to you in the initial reply is justified by Article 4(1)(b) (protection of the privacy and the integrity of the individual) of Regulation (EC) No 1049/2001 (see Section 2.2 below).

The detailed reasons underpinning the assessment are set out below.

## **2.1. No further documents held**

As abovementioned, the Secretariat-General confirms that the Commission does not hold any further document that would correspond to the description given in your initial application. Notably, and as abovementioned, the new search for a more complete version of document 1, containing all of its annexes, did not lead to the identification of any further documents.

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’<sup>4</sup>.

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

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<sup>4</sup> Judgment of the Court of Justice of 2 October 2014, *Strack v Commission*, C-127/13 P, ECLI:EU:C:2014:2250, paragraph 46.

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<sup>5</sup>.

The Secretariat-General would like to point out that the search carried out upon registration of your confirmatory application for further documents, and notably for annexes to document 1, was conducted encompassing various locations, document registries and multiple databases, including the records of the Directorate-General for Enlargement and Eastern Neighbourhood, as well as in Ares<sup>6</sup>.

These efforts were coordinated with the Historical Archives Service (HAS). As document 1 was sent to several former Commissioners, the archives service performed new searches in all of their ADONIS databases. However, in all versions that could be traced back, several pages are missing, and no further annexes could be located. Searches through paper files of the abovementioned former Commissioners were not successful either. It appears that they were unfortunately incorrectly registered at the time of reception in paper form by the Cabinets. In fact, the most complete version of document 1 that the archives could identify is the one for which partial access was already granted to you at initial stage.

Considering that document 1 was previously disclosed as part of access to document request 2013-3347, a keyword search was also conducted by the Secretariat-General in the old access to document internal files. However, only the version of the document that was disclosed to you in the context of case 2013-3347 could be identified.

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 are not held by the institution<sup>7</sup>. This presumption continues to apply unless the applicant can rebut it by relevant and consistent evidence<sup>8</sup>. The Court of Justice, ruling on an appeal in Case C-440/18 P, has confirmed these conclusions<sup>9</sup>.

The General Court held in Case T-468/16 (*Verein Deutsche Sprache v Commission*) that a mere suspicion does not suffice to put in question the presumption of legality of the institution's statement that it does not hold the documents requested<sup>10</sup>.

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

<sup>6</sup> Ares is the IT system of the Commission for documents management ([Document management and archival policy - European Commission](#)).

<sup>7</sup> 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.

<sup>8</sup> *Ibid.*

<sup>9</sup> 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.

<sup>10</sup> *Ibid.*, paragraph 37.

In your confirmatory application, you argue that ‘the omission [of annexes] is unjustified and undermines the principles of transparency and accountability enshrined in EU law’.

As explained above, the search conducted at confirmatory stage was done comprehensively, encompassing both electronic databases and paper records. However, despite these efforts, no trace of the annexes requested has been found.

You further insist that ‘the Commission’s [...] failure to disclose requested documents, including the annexes, appear to constitute a deliberate cover-up, further eroding public trust in the institution’. In this regard, the Secretariat-General would like to emphasise that the Commission is not refusing access to the document requested but rather that said documents are not in the possession of the Commission, in the meaning of Article 2(3) of Regulation (EC) No 1049/2001.

Additionally, the Secretariat-General would like to remind you that you have introduced multiple access to document requests on what you name the ‘Romanian Children File’, and in many cases, you have been granted access, at least partially, to the requested documents.

Thus, given that the European Commission does not hold any annexes to document 1, it is not in a position to fulfil your request on this point.

## **2.2. Protection of privacy and the integrity of the individual**

In your confirmatory application, you contest the redactions done at initial stage in documents 1, 2 and 3.

As abovementioned, the Secretariat-General is pleased to grant you further access to document 1. You can find the new redacted version in attachment to this decision. However, the remaining redacted parts in this document, as well as the redactions in documents 2 and 3 as communicated to you at initial stage, must remain protected under Article 4(1)(b) of Regulation (EC) No 1049/2001.

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides that ‘[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data’.

As such, this provision ‘establishes a specific and reinforced system of protection of a person whose personal data could, in certain cases, be communicated to the public [...]’<sup>11</sup>. In line with this, when a request is made for access to documents containing personal data, any potential

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<sup>11</sup> Judgment of 25 September 2018, *Maria Psara and Others v European Parliament*, T-639/15 to T-666/15 and T-94/16, EU:T:2018:602, paragraph 65.

impact on or undermining of an individual's privacy and integrity must be carefully examined and assessed in accordance with EU data protections laws<sup>12</sup>.

In such cases, the Court of Justice has ruled that Regulation (EC) No 45/2001, which protects individuals' personal data processed by EU institutions, becomes fully applicable<sup>13</sup>.

Please note that Regulation (EC) No 45/2001 was repealed on 11 December 2018 by Regulation (EU) 2018/1725<sup>14</sup>, which now governs the processing of natural persons' personal data by the Union institutions, bodies, offices and agencies. Nevertheless, the relevant case-law remains applicable to the interpretation of Regulation (EU) 2018/1725.

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person [...]'. Further to this, the Court of Justice has also confirmed in Case C-465/00 (*Rechnungshof*) that 'there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life'<sup>15</sup>.

Documents 1, 2 and 3 contain personal data such as the names, initials, signatures and contact details of persons who do not form part of the senior management of the European Commission and of external stakeholders. The names of the persons concerned, as well as any other data from which their identity can be deduced, undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725<sup>16</sup>.

According to Article 9(1)(b) of Regulation (EU) 2018/1725 and the Courts' case-law, personal data shall only be transmitted if the recipient establishes 'that it is necessary to have the data transmitted for a specific purpose in the public interest'<sup>17</sup>. As the data controller, the institution is not required to verify the need for transferring personal data by itself. Only once the recipient has established the necessity for transmission, must the institution assess whether the data subject's legitimate interests might be prejudiced and, in the affirmative, ensure that the transmission is proportionate after weighing the competing interests.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, can the transmission of personal data occur.

In your confirmatory application, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore,

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<sup>12</sup> Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd*, C-28/08 P, EU:C:2010:378, paragraph 59.

<sup>13</sup> *Ibid.*

<sup>14</sup> OJ L 295, 21.11.2018, p. 39, ELI: <http://data.europa.eu/eli/reg/2018/1725/oj>.

<sup>15</sup> Judgment of the Court of Justice of 20 May 2003, *Rechnungshof and Others v Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

<sup>16</sup> Judgment *European Commission v The Bavarian Lager* aforementioned, paragraph 68.

<sup>17</sup> Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Food Safety Agency*, C-615/13 P, EU:C:2015:489, paragraph 47.

the European Commission does not have to examine whether there is a reason to assume that the data subjects' legitimate interests might be prejudiced.

Notwithstanding the above, there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by the disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, the Secretariat-General concludes that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in documents 1, 2 and 3.

### **3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

Please note that Article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

Therefore, the Secretariat-General is not in a position to address your argumentation, developed in the confirmatory application, as regards the overriding public interest in transparency.

### **4. PARTIAL ACCESS**

In accordance with Article 4(6) of Regulation (EC) 1049/2001, the Secretariat-General has considered the possibility of granting wider partial access to the documents requested.

In this context, as abovementioned, wider partial access has been granted to you in document 1.

However, for the reasons already explained, no further public access to documents 2 and 3 is possible without undermining the interests described above.

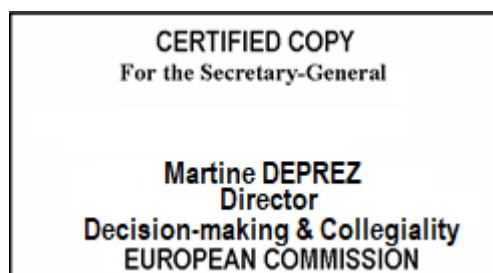
## 5. MEANS OF REDRESS

Finally, I draw your attention to the options available for challenging this decision. You may institute proceedings against the Commission before the General Court<sup>18</sup> or submit a complaint to the Ombudsman<sup>19</sup>. The conditions for doing so are laid down in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

*For the Commission*  
*Ilze JUHANSONE*  
*Secretary-General*

Enclosure: 1



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<sup>18</sup> For deadlines and other procedural requirements concerning the institution of proceedings at the General Court, please refer to the following page: [http://curia.europa.eu/jcms/jcms/Jo2\\_7040/en/](http://curia.europa.eu/jcms/jcms/Jo2_7040/en/).

<sup>19</sup> Any complaint to the Ombudsman must be made within two years of receiving the Commission's final position on the matter. The Ombudsman's online complaint form is available at: <https://secure.ombudsman.europa.eu/en/atyourservice/secured/complaintform.faces>.