



EUROPEAN COMMISSION

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C(2021) 4247 final

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Belgium

**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 – GESTDEM  
2021/2261**

Dear Ms Douo,

I am writing in reference to your email of 4 May 2021, 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 documents<sup>2</sup> (hereafter ‘Regulation (EC) No 1049/2001’).

Through your initial application of 13 April 2021, you requested access to, I quote, ‘minutes of the following meetings:

- ENGIE 14 Oct 2020 - Commissioner Thierry Breton - Stratégie d’ENGIE et plan de relance européen
- Confindustria 28 May 2020 - Commissioner Thierry Breton – Recovery’.

By letter of 30 April 2021, the European Commission’s Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs informed you that the European Commission does not hold any documents that would correspond to the description given in your application.

In your confirmatory application, you question the absence of any documents. You state that, I quote, ‘[a]fter an extension by the Commission of their deadline to respond by 15

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<sup>1</sup> OJ L 345, 29.12.2001, p. 94.

<sup>2</sup> OJ L145, 31.05.2001, p. 43.

working days, DG GROW access to document's team argued that the health and security measures implied that they were "not in a position to follow this procedure". Art. 7(4) of the Regulation therefore entitles us to make a confirmatory application. We accordingly urge you to disclose the requested information in the shortest time possible'.

Against this background, the European Commission has carried out a renewed search for the documents requested. Following this renewed search, I confirm that the European Commission does not hold any documents that would fall within the scope of your request.

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.

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 exist<sup>3</sup>. This presumption continues to apply, unless the applicant can rebut it by relevant and consistent evidence<sup>4</sup>. The Court of Justice, ruling on an appeal in Case C-440/18 P, has confirmed these conclusions<sup>5</sup>.

In your confirmatory application you do not provide evidence that the institution is in possession of documents corresponding to the description provided in your application.

Given that the European Commission does not hold any documents falling within the scope of your application, it is not in a position to fulfil your request.

Please note that the above-referred quote of the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs concerns the notification of the initial decision in electronic form given the exceptional circumstances due to the COVID-19 pandemic. Indeed, as explained in its reply of 30 April 2021,

'[a]ccording to the standard operational procedure, the reply is usually also sent to you by registered mail. Please note, however, that due to the extraordinary health and security measures currently in force during the COVID-19 epidemics, which include the requirement for all Commission non-critical staff to telework, we are unfortunately not in a position to follow this procedure until further notice'.

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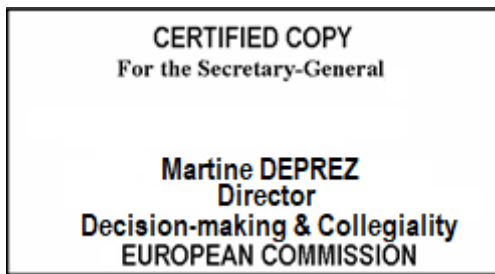
<sup>3</sup> Judgment of the General Court of 23 April 2018, *Verein Deutsche Sprache v Commission*, T-468/16, EU:T:2018:207, paragraphs 35-36.

<sup>4</sup> *Ibid.*

<sup>5</sup> Order of the Court of Justice of 30 January 2019, *Verein Deutsche Sprache v Commission*, C-440/18 P, EU:T:2018:207, paragraph 14.

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*