



EUROPEAN COMMISSION

Brussels, 4.4.2022
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Ms Carlotta Indiano
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**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 – GESTDEM
2022/0192**

Dear Ms Indiano,

I am writing in reference to your email of 8 February 2022, registered on 10 February 2022, 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’).

Through your initial application of 22 December 2021, you requested access to documents which contain the following information:

‘For the period between November 2020 to April 2021:

- a list of all meetings and/or calls held by the Directorate-General for Economic and Financial Affairs, including any Cabinet Members of the Commissioner Paolo Gentiloni and/or officials, during which the Italian Resilience and Recovery Plan was discussed together with any members of the Italian government.

The list should include: date, individuals attending and organisational affiliation, as well as the issues discussed;

- all minutes and other reports of these meetings and/or calls;

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

² Official Journal L145, 31.05.2001, p. 43.

- all documents prepared for the purpose of the meetings issued both in preparation and after the meetings took place;

- all correspondence, including attachments (i.e. any emails, mail correspondence or telephone call notes) between the Directorate-General for Economic and Financial Affairs, including any Cabinet Members and/or officials, and any members of the Italian government discussing the Italian PNRR.’

By letter of 31 January 2022, the Directorate-General for Economic and Financial Affairs informed you that it was not able to identify any documents as falling within the scope of your request.

In your confirmatory application, you do not question the absence of any documents within the scope of your initial request. However, you extend the scope of your initial request by asking, I quote: ‘... if there is a list of documents exchanged in electronic form or by mail between the Directorate-General for ECOFIN, including any Cabinet Members of the Commissioner Gentiloni and any members of the Italian government for the period between November 2020 to April 2021. If you have such a list or there is any other correspondence between the DG ECOFIN and the Italian government, I would like to have access to those documents.’

Pursuant to the settled case law³, a confirmatory application can only be submitted to invite the Commission to reconsider its initial position on the document(s) already requested and not to submit an application for access to other documents.

Against this background, the European Commission has carried out a renewed, thorough search for the documents requested. Following this renewed search, I confirm that the Commission does not hold any documents that would correspond to the description given in your initial application.

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.

As already explained to you in the initial reply, no meetings or discussions were held between Commissioner Gentiloni, members or his cabinet, staff of the Commission Directorate-General for Economic and Financial Affairs and members of the Italian government about the Italian Resilience and Recovery Plan in the period to which you refer. Therefore, the Commission does not hold any documents that would correspond to the description given in your application.

Please note that by ‘the members of Italian government’ as referred to in your requests we consider only members of the government, i.e. Prime Minister and Ministers, and not the administrative members of the Italian administration.

³ Judgment of the General Court (Eighth Chamber) of 10 February 2021, *XC v European Commission*, T-488/18, EU:T:2021:76, paragraph 168.

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 exist⁴. This presumption continues to apply, unless the applicant can rebut it by relevant and consistent evidence⁵. The Court of Justice, ruling on an appeal in Case C-440/18 P, has confirmed these conclusions⁶.

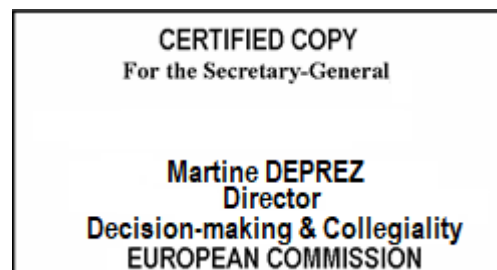
In your confirmatory application, you do not provide evidence that the institution is in possession of any further documents corresponding to the description provided in your application. The General Court held in Case T-468/16 (*Verein Deutsche Sprache v Commission*) that a mere suspicion that there must be more documents does not suffice to put in question the presumption of legality of the institution's statement⁷.

Given that the European 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.

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 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.

⁷ Judgment of the General Court of 23 April 2018 *Verein Deutsche Sprache v Commission*, cited above, paragraph 37.