



## EUROPEAN COMMISSION

Secretariat-General

Directorate C – Transparency, Efficiency & Resources

**The Director**

Brussels  
SG.C.1/TB/rc -

*By registered mail with AR*

Mr Alexander Fanta  
netzpolitik.org  
Rue de la Loi 155  
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**Copy by email:**  
[ask+request-8503-  
2a1d660e@asktheeu.org](mailto:ask+request-8503-2a1d660e@asktheeu.org)

**Subject: Your application for access to documents – GESTDEM 2020/5488**

Dear Mr Fanta,

I refer to your e-mail/letter of 15 September 2020, registered on 17 September 2020, in which you make a request for access to documents, under the above-mentioned reference number.

### **1. SCOPE OF YOUR REQUEST**

You request access to, I quote:

‘[a]ccording to Report from the Commission on the Implementation of Regulation 1049/2001 published on September 15, 2020 for the year 2019, last year at total of 18,337 documents were entered into the document register, including 14,796 documents entered by the European Commission. I would like to request the number of documents held that are SMS or exchanges from messaging services such as WhatsApp, Signal, Telegram, Wire, Threema, iMessage, etc. Please provide a list of such registered documents including entry into the register and the DG that entered it’.

### **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001**

We regret to inform you 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.

Article 2(3) of Regulation (EC) No 1049/2001 provides, in particular, that '[t]his Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union'.

Indeed, the register of Commission documents<sup>1</sup> contains various types of documents marked by specific abbreviations:

- C: Documents relating to official instruments for which the Commission has sole responsibility. Some are transmitted to the Council or Parliament for information;
- COM: Proposed legislation and other Commission communications to the Council and/or the other institutions, and their preparatory papers. Commission documents for the other institutions (legislative proposals, communications, reports, etc.);
- JOIN: Commission and High Representative Joint Acts;
- OJ: Agendas of Commission meetings;
- P: Decision by the President of the Commission;
- PV: Minutes of Commission meetings;
- SEC: Documents which cannot be classified in any of the other series, for example, day notes of written procedures, impact assessment summaries, impact assessments, Commission Decisions, etc.; and
- SWD: Commission staff working documents.

To each of the above document types belongs a specific template including the editing and formatting rules that the author of the given document must follow in order to ensure that the document is formally acceptable for adoption. These rules can be followed only if the author applies the custom settings of the word processor software used by the Commission. Other formats, such as those of SMS or the interfaces used by various messaging services, are not acceptable for registration.

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<sup>1</sup> <https://ec.europa.eu/transparency/regdoc/index.cfm?fuseaction=search>

Even in the very unlikely case that an SMS or a messaging service content appeared, in converted form, in one of the documents listed in the document register, the database is not equipped with standard searching tools that would enable the Commission to filter such converted documents. Thus, in order to launch the search necessary to identify documents potentially falling within the scope of your request, the software that handles the document register should be reprogrammed.

As the Court confirmed, ‘ [...] all information which can be extracted from an electronic database by general use through pre-programmed search tools, even if that information has not previously been displayed in that form or ever been the subject matter of a search by the staff of the institutions, must be regarded as an existing document’; however, ‘the operations which the programming of new SQL queries would involve were not comparable to a normal or routine search in the database concerned, carried out using the search tools available to the Commission in respect of that database and that, therefore, the information requested would have required the creation of a new document.’<sup>2</sup>

Given that no such documents, corresponding to the description given in your application, are held by the Commission, the Commission is not in a position to fulfil your request.

### **3. MEANS OF REDRESS**

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the Commission at the following address:

European Commission  
Secretariat-General  
Unit C.1. ‘Transparency, Document Management and Access to Documents’  
BERL 7/076  
B-1049 Brussels,

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu).

Yours faithfully,

Tatjana Verrier  
Director

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<sup>2</sup> Judgment of the Court of 11 January 2017, *Typke v Commission*, C-491/15 P, EU:C:2017:5, paragraphs 36 and 47.