



EUROPEAN COMMISSION

Brussels, 16.9.2022  
C(2022) 6769 final

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**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  
2022/2940 and 2941**

Dear Ms Rosén Fondahn,

I am writing in reference to your email of 25 July 2022, registered on 26 July 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 documents<sup>2</sup> (hereafter ‘Regulation (EC) No 1049/2001’).

Through your initial applications of 22 May 2022, you requested access to the following documents:

- 1) ‘all emails sent from Head of Unit Lucilla Sioli to Director-General Roberto Viola during the period 1 February 2021 to 1 March 2021’<sup>3</sup>;
- 2) ‘all emails sent from Director-General Roberto Viola to Head of Unit Lucilla Sioli during the period 1 February 2021 to 1 March 2021’;<sup>4</sup> and

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

<sup>2</sup> Official Journal L145, 31.05.2001, p. 43.

<sup>3</sup> Request registered under GestDem 2022/2940.

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

- 3) ‘all email correspondence between Lucilla Sioli, Head of Unit, and Nathalie Smuha, AI HLEG Coordinator.’<sup>5</sup>

By letter of 15 July 2022, the Directorate-General for Communications, Networks, Content and Technology informed you that it was not able to identify any documents as falling within the scope of your request.

In your confirmatory application, you request a review of this initial reply.

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 application.

In accordance with Article 3(a) of Regulation (EC) No 1049/2001, a ‘document’ shall mean any content whatever its medium concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility.

However, the institution is not obliged to register and preserve each and every document. In accordance with Article 7(1) of Commission Decision of 6 July 2020 on records management and archives<sup>6</sup>, ‘[d]ocuments shall be registered if they contain important information which is not short-lived or if they may involve action or follow-up by the Commission or one of its departments’. Moreover, Article 2(3) of Regulation (EC) No 1049/2001 provides that the right of public access as defined in that regulation applies only to existing documents held by the institution. Furthermore, pursuant to settled case-law, ‘the right of access to documents of the institutions applies only to existing documents in the possession of the institution concerned and Regulation No 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 of Regulation No 1049/2001.’<sup>7</sup>

In the light of the above, given that the European Commission does not hold such documents corresponding to the description given in your application and it is not in a position to fulfil your request.

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<sup>5</sup> Request registered under Gestdem 2022/2941.

<sup>6</sup> [https://ec.europa.eu/info/sites/info/files/c\\_2020\\_4482\\_en.pdf](https://ec.europa.eu/info/sites/info/files/c_2020_4482_en.pdf).

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*

