



EUROPEAN COMMISSION

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Ms Belén Balanyá
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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 under Regulation
(EC) No 1049/2001 – GESTDEM 2020/1039**

Dear Ms Balanyá,

I refer to your email of 21 April 2020, registered on the same day, by which you submit 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').

On 13 February 2020, you submitted an initial application for access to documents under Regulation (EC) No 1049/2001 to the European Commission, in which you requested access to the minutes of the following meetings:

- 09/01/20 between Commissioner Timmermans and OSEPI on the Green Deal and external relations
- 16/01/20 between Commissioner Timmermans and VDA on the EGD: challenges and opportunities for the automotive industry
- 20/01/20 between Commissioner Timmermans and Google on opportunities and responsibility of digital technology for Green Deal
- 21/01/20 between Commissioner Timmermans and Jeremy Rifkin Enterprises on the Green Deal

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

² Official Journal L 145 of 31.5.2001, p. 43.

- 23/01/20 between Commissioner Timmermans and Coca Cola on the Green Deal and sustainability (in Davos)
- 23/01/20 between Commissioner Timmermans and General Electric on the European Green Deal and renewable energy (in Davos)
- 23/01/20 between Commissioner Timmermans and Shell on the European Green Deal and its implementation (in Davos)
- 23/01/20 between Commissioner Timmermans and Unilever and IKEA on Opportunities and collaboration on the European Green Deal (in Davos)
- 23/01/20 between Commissioner Timmermans and Volkswagen on the European Green Deal challenges and opportunities for the automotive industry (in Davos)
- 23/01/20 between Commissioner Timmermans and Apple on Opportunities and collaboration on the Green Deal (in Davos)
- 28/01/20 between Commissioner Timmermans and the European House-Ambrosetti on the European Green Deal
- 29/01/20 between Commissioner Timmermans CSR Europe on Sustainable development and industry
- 29/01/20 between Commissioner Timmermans and EUROFER on the Steel sector and the Green Deal
- 31/01/20 between Commissioner Timmermans and IMPALA on Efforts to green the industry and raise climate awareness
- 31/01/20 between Commissioner Timmermans and ACEA on the Green Deal and car industry
- 03/12/19 between Diederik Samsom and the ERT on the Speech on the EGD at the ERT energy transition and climate change working group
- 10/12/19 between Diederik Samson and Hydrogen Europe on hydrogen in Europe
- 12/12/19 between Lukas Visek and COPA on the Green Deal and agriculture
- 17/12/19 between Lukas Visek and FNSEA on Green Deal and agriculture
- 18/12/19 between Daniel Mes and ACEA on the Green Deal and car industry
- 07/01/20 between Antoine Colombani, Diederik Samson and BASF on the European Green Deal and industry
- 08/01/20 between Diederik Samson and ArceIorMittal on European Green Deal and industry
- 09/01/20 between Diederik Samson, Stefanie Hiesinger and BDI on the European Green Deal and industry
- 13/01/20 between Diederik Samson and CEFIC on the European Green Deal
- 16/01/20 between Daniel Mes and Google on Digital aspects of the Green Deal
- 16/01/20 between Daniel Mes Warstila corporation on Green Deal and industrial strategy
- 20/01/20 between Aleksandra Tomczak and Eurogas on the Challenges and goals for the gas sector on the way to EU climate neutrality
- 21/01/20 between Diederik Samson and Eurelectric on the European Green Deal
- 22/01/20 between Lukas Visek and LTO Nederland on the discussion on the role of farmers in the Green Deal

- 22/01/20 between Daniel Mes and FTAI on the Green Deal and road transport
- 22/01/20 between Daniel Mes and Scania AB on the Green Deal and the truck industry
- 22/01/20 between Daniel Mes and Bertlesmann on the Digital aspects of the Green Deal
- 22/01/20 between Diederik Samson and Orsted A/S on the European Green Deal
- 24/01/20 between Lukas Visek and the Dutch Produce Association on the Discussion on the role of the fruits and vegetables sector in the green deal
- 27/01/20 between Antoine Colombani and Agora Energiewende on the discussion on the European Green Deal and Industry
- 27/01/20 between Diederik Samson and Bloomberg on the European Green Deal
- 28/01/20 between Aleksandra Tomczak and PGE on the Decarbonisation in Poland and climate neutrality
- 29/01/20 between Diederik Samson and EBC on the Speech on the European Green Deal and renovation wave at the EBC construction sector lunch
- 30/01/20 between Diederik Samson and UFE on the Speech on the EGD at the UFE Internal European seminar
- 30/01/20 between Daniel Mes and Bureau Brussels Consulting on The Green Deal and the ICT sector
- 03/02/20 between Diederik Samson and Ecopreneur.eu on the Green Deal and circular economy
- 03/02/20 between Diederik Samsom and Navigant Netherlands BV on the European Green Deal
- 04/02/20 between Diederik Samson and ESO and EBU on the European Green Deal
- 05/02/20 between Diederik Samson and Royal Schiphol Group, Heathrow Airport Holdings, Neste, Shell and World Economic Forum on the European Green Deal
- 12/02/20 between Antoine Colombani and JEDI on the Green Deal and Innovation

This application was registered under reference number GESTDEM 2020/1039.

In its initial reply of 15 April 2020, the Secretariat-General enclosed a copy of three of the documents you requested. One document contained personal data that had been removed in accordance with the General Data Protection Regulation (Regulation (EU) 2018/1725)³. The Secretariat-General informed you that the Commission did not hold any documents that would correspond to the other descriptions given in your application.

³ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

In your confirmatory application, you question the absence of any further documents beyond the three that you received, in the form of reports, summaries, minutes, notes or record keeping of any kind.

Against this background, the European Commission has carried out a renewed, thorough search for documents that would fall within the scope of your application.

Following this renewed search, I confirm that no additional documents have been found that match your request.

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. I would like to refer in this respect to the judgment of the Court of Justice in Case C-127/13 P (*Strack v European 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’⁴.

The above-mentioned conclusion has been confirmed in Case C-491/15 P (*Typke v European 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 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 1049/2001’⁵.

Furthermore, the General Court held in Case T-468/16 (*Verein Deutsche Sprache v European Commission*) that there exists a presumption of lawfulness attached to the declaration by the institution asserting that documents do not exist⁶. This presumption continues to apply, unless the applicant can rebut it by relevant and consistent evidence⁷. Your general argument that you were surprised about the absence of further documents cannot be construed to constitute such relevant and consistent evidence. The Court of Justice, ruling on an appeal in Case C-440/18 P, has confirmed the earlier conclusions by the General Court⁸.

Given that the European Commission does not hold any documents corresponding to the description given in your application, it is not in a position to fulfil your request.

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

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

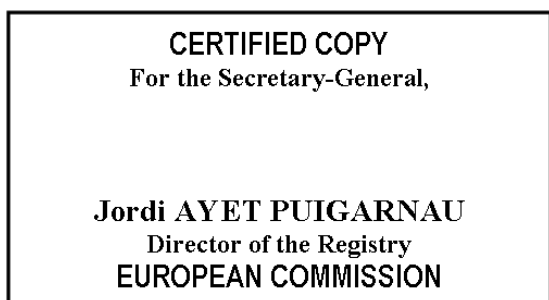
⁶ Judgment of the General Court of 23 April 2018, *Verein Deutsche Sprache v European Commission*, T-468/16, EU:T:2018:207, paragraphs 35-36.

⁷ *Ibid.*

⁸ Order of the Court of Justice of 30 January 2019, *Verein Deutsche Sprache v Commission*, C-440/18P, ECLI:EU:C:2019:77, 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