



EUROPEAN COMMISSION

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OUT OF SCOPE 



United Kingdom

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION No 1049/2001¹**

Subject: Your confirmatory application for access to documents – Gestdem 2018/5954

Dear ,

I am writing in reference to your email of 4 December 2018, registered on the same day, by which you lodge a confirmatory application in accordance with Article 7(2) of Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter ‘Regulation No 1049/2001’).

In your initial application of 13 November 2018, you requested access to ‘all communications, including records/minutes of oral conversations between Michel Barnier/Sabine Weyand and the People’s Vote campaign, or its representatives, including, but not limited to,  OUT OF SCOPE in the period from February 1 2018 to today.’

By letter of 4 December 2018, the Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 of the TEU informed you that it was not able to identify any documents as falling within the scope of your request.

In your confirmatory application you question the absence of any documents and request a review of this position.

Against this background, the European Commission has carried out a renewed, thorough search for the documents requested.

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

² Official Journal L 145 of 31.05.2001, p.43.

Following this renewed search, I confirm that the European Commission does not hold any documents that would correspond to the description given in your application.

Indeed, as specified in Article 2(3) of Regulation 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 in Case C-127/13 P, according to which '[n]either Article 11 of Regulation No 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'³. The above-mentioned conclusion has been confirmed by the Court of Justice in case C-491/15 P⁴.

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.

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 European Commission
Martin SELMAYR
Secretary-General

³ Judgment of 2 October 2014, *Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 46.

⁴ Judgment of 11 January 2017, *Typke v Commission*, C-491/15 P, EU:C:2017:5, paragraph 31.