



EUROPEAN COMMISSION

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C(2022) 1950 final

Alexander Fanta
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Germany

**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
2021/8034**

Dear Mr Fanta,

I am writing to you in reference to your email of 26 January 2022, registered on the same day, 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 (hereinafter ‘Regulation (EC) No 1049/2001’).

In your initial application of 3 December 2021, registered on the same day under the abovementioned reference number, you requested access to, I quote, ‘documents which contain the following information:

- The e-mail exchange between the offices of Karel Pinxten and Commissioner Johannes Hahn mentioned in an article published in French daily "Liberation" on December 1st, 2021
- All other documents, including e-mails and internal deliberations, regarding the hunting trip organised by the European Landowners' Organization that Commissioner Hahn participated in’.

¹ OJ L 345, 29.12.2001, p. 94.

² OJ L145, 31.05.2001, p. 43.

In its initial reply, transmitted to you by a letter of 10 January 2022, the Directorate-General for Human Resources and Security of the European Commission informed you that the Commission did not hold any documents that would correspond to the description given in your application. As specified, the possible correspondence requested did not meet the eligibility criteria for registration and was therefore not registered by the Commission. Consequently, no document matching your request was identified in the Commission's institutional archives during the search conducted in response to your initial application.

In your confirmatory application, you request a review of this position. Referring to the Commission's internal Guidelines on document registration and the identification of documents³ (hereinafter 'Guidelines'), you claim that '[the correspondence in question] should be registered as documents falling under Regulation [(EC) No] 1049/2001'.

Against this background, the Commission has carried out a renewed 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.

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. Moreover, please note that according to Article 3(a) of Regulation 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 preserve each and every document. In accordance with Article 7(1) of Commission Decision of 6.7.2020 on records management and archives⁴, '[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'. These criteria are also reflected in the Guidelines, addressed to the Commission's services.

As already explained to you in the reply to your initial application, according to the Guidelines, a document qualifies for registration in the Commission's relevant corporate document management system if (i) it relates to the policies, activities or decisions falling within the Commission's sphere of responsibility; (ii) the information contained therein is important and not short-lived; (iii) it has been drawn up or received by the Commission. Please note that these criteria are cumulative.

In your confirmatory application, you refer to the list of examples of items to be registered, or not, contained in the Guidelines, and, more specifically, to its part concerning, I quote, 'information received from/sent to ... other EU institutions'. Please note, however, that in your reference, you overlook a remaining, essential part of the description, which specifies that the information has to be 'received [...] in accordance with the rules governing the underlying business process'.

³ Ref. Ares(2018)5874624.

⁴ https://ec.europa.eu/info/sites/info/files/c_2020_4482_en.pdf.

As such, the correspondence in question does not fall under this specific category of items eligible for registration, as the transmitted information did not pertain to a concrete underlying business process governed by a specific set of rules.

With regard to the parts of the correspondence received by the Commission not from another EU institution but from an external stakeholder, first of all, they did not relate to the policies, activities or decisions falling within the Commission's sphere of responsibility and, second of all, the information contained therein was short-lived and not important.

In this context, please note that in the abovementioned list of examples of items to be registered, or not, contained in the Guidelines, 'exchanges on short-lived matters (such as exchanges regarding practical meeting arrangements)' are listed as an example of items that do not require registration.

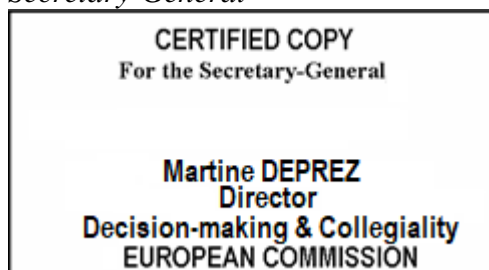
In light of the above, I conclude that the Commission does not hold any documents falling within the scope of your application. It is therefore not in a position to fulfil your request.

Please note that 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 exist⁵. This presumption continues to apply, unless the applicant can rebut it by relevant and consistent evidence⁶. The Court of Justice, ruling on an appeal in Case C-440/18 P, has confirmed these conclusions⁷.

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



⁵ Judgment of the General Court of 23 April 2018, *Verein Deutsche Sprache v Commission*, T-468/16, EU:T:2018:207, paragraphs 35-36.

⁶ *Ibid.*

⁷ 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.