



EUROPEAN COMMISSION

Brussels, 23.03.2022  
C(2022) 1953 final

Ms Francesca Cicculli  
Investigative Reporting Project Italy  
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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  
2021/8310**

Dear Ms Cicculli,

I am writing in reference to your email of 11 February 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 documents<sup>2</sup> (hereafter ‘Regulation (EC) No 1049/2001’).

Through your initial application of 22 December 2021, you requested access to:

‘For the period between November 2020 to April 2021:

- a list of all meetings and/or calls held by the Secretariat General of the European Commission, including member of Recovery & Resilience Task Force, during which the Italian Resilience and Recovery Plan was discussed together with any members of the Italian government.

The list should include: date, individuals attending and organisational affiliation, as well as the issues discussed;

- all minutes and other reports of these meetings and/or calls;

- all documents prepared for the purpose of the meetings issued both in preparation and after the meetings took place.

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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.

- all correspondence, including attachments (i.e. any emails, mail correspondence or telephone call notes) between the Secretariat General of the European Commission, including member of Recovery & Resilience Task Force, and any members of the Italian government discussing the Italian PNRR.’

By letter of 7 February 2022, the European Commission’s Recovery & Resilience Task Force informed you that it was not able to identify any documents as falling within the scope of your request.

In your confirmatory application, you do not question the absence of any documents. However, you extend the scope of your initial request by asking, I quote: ‘Nevertheless, I would like to ask you if there is a list of documents exchanged in electronic form or by mail between the Secretariat General and any members of the Italian government for the period between September 2020 to April 2021. If you have such a list or there is any other correspondence between the Secretariat and the Italian government, I would like to have access to those documents.’

Please note that when assessing a confirmatory application for access to documents submitted pursuant to Article 7(2) of Regulation (EC) No 1049/2001, the Secretariat-General conducts a review of the reply given by the Directorate-General concerned at the initial stage, in this case for the documents already requested in your initial application and for a period between November 2020 to April 2021.

Pursuant to the settled case law<sup>3</sup>, a confirmatory application can only be submitted to invite the Commission to reconsider its initial position on the document(s) already requested and not to submit an application for access to other documents.

Therefore, it is not possible to broaden the scope of the request at the confirmatory stage. This can only be done via the submission of a new initial application. You remain entitled to submit a new initial application for access to other documents in accordance with Article 7(1) of Regulation (EC) No 1049/2001.

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.

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.

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<sup>3</sup> Judgment of the General Court (Eighth Chamber) of 10 February 2021, *XC v European Commission*, T-488/18, EU:T:2021:76, paragraph 168.

As already explained to you in the initial reply, no meetings or discussions were held between the Secretariat-General of the European Commission, including the Recovery & Resilience Task Force, and the Italian authorities at the level of members of the Italian government about the Italian Recovery and Resilience Plan in the period to which you refer. Therefore, the Commission does not hold any documents that would correspond to the description given in your application.

Please note that by ‘the members of Italian government’ as referred to in your requests we consider only members of the government, i.e. Prime Minister and Ministers, and not the administrative members of Italian administration.

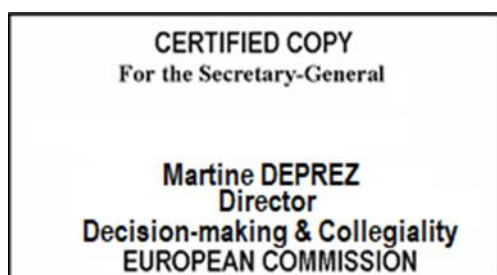
The General Court held in Case T-468/16 (*Verein Deutsche Sprache v Commission*) that there exists a presumption of lawfulness attached to the declaration by the institution asserting that documents do not exist<sup>4</sup>. This presumption continues to apply, unless the applicant can rebut it by relevant and consistent evidence<sup>5</sup>. The Court of Justice, ruling on an appeal in Case C-440/18 P, has confirmed these conclusions<sup>6</sup>.

In your confirmatory application, you do not provide evidence that the institution is in possession of any further documents corresponding to the description provided in your application. The General Court held in Case T-468/16 (*Verein Deutsche Sprache v Commission*) that a mere suspicion that there must be more documents does not suffice to put in question the presumption of legality of the institution’s statement<sup>7</sup>.

Given that the European Commission does not hold any such 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 Commission*  
*Ilze JUHANSONE*  
*Secretary-General*

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<sup>4</sup> Judgment of the General Court of 23 April 2018, *Verein Deutsche Sprache v Commission*, T-468/16, EU:T:2018:207, paragraphs 35-36.

<sup>5</sup> *Ibid.*

<sup>6</sup> 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.

<sup>7</sup> *Verein Deutsche Sprache v Commission* judgment, cited above, paragraph 37.