



EUROPEAN COMMISSION

Brussels, 12.12.2022

C(2022) 9576 final

Mr Andrea Glioti
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United Kingdom

**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 2022/4798**

Dear Mr Glioti,

I am writing in reference to your email of 4 October 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’).

Please accept our apologies for the delay in replying to your request.

1. SCOPE OF YOUR REQUEST

In your initial application of 25 August 2022, you requested access to:

‘All correspondence (including emails and WhatsApp messages) between the European Commission’s Directorate-General for Budget and the International Centre for Migration Policy Development (ICMPD) since 02/03/2016

¹ OJ L 345, 29.12.2001, p. 94.

² OJ L145, 31.05.2001, p. 43.

All minutes and any other records of the following meetings between representatives of the ICMPD and the listed Commissioners, Members of their Cabinet or Director-Generals, as documented in the EU Transparency Register:

<https://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=428294520891-74>

Günther Oettinger – 18/07/2018’

In its reply to your initial application, dated 15 September 2022, the Directorate-General for Budget informed you that it did not hold any documents that would correspond to the description given in your application.

In your confirmatory application, you question the absence of any documents corresponding to the description provided in your initial application.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001

Against this background, the European Commission services concerned have carried out a renewed, thorough search for the documents requested. Following this renewed search, the Secretariat-General confirms that the European Commission does not hold any documents that would correspond to the description provided in your application.

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.

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 exist³. This presumption continues to apply unless the applicant can rebut it by relevant and consistent evidence⁴. The Court of Justice, ruling on an appeal in Case C-440/18 P, has confirmed these conclusions⁵.

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 statement⁶.

³ Judgment of the General Court of 23 April 2018, *Verein Deutsche Sprache v Commission*, T-468/16, EU:T:2018:207, paragraphs 35-36.

⁴ Ibid.

⁵ Order of the Court of Justice of 30 January 2019, *Verein Deutsche Sprache v Commission*, C-440/18 P, ECLI:EU:C:2019:77, paragraph 14.

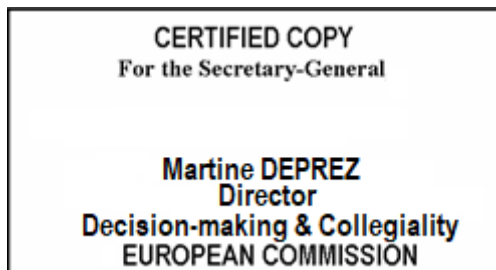
⁶ Judgment of the General Court of 23 April 2018 *Verein Deutsche Sprache v Commission*, cited above, paragraph 37.

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

3. MEANS OF REDRESS

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