



EUROPEAN COMMISSION

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Ms Belen Balanya
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Belgium

**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
2021/3564**

Dear Ms Balanya,

I am writing in reference to your email of 4 October 2021, registered on the next 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 (hereafter ‘Regulation (EC) No 1049/2001’).

Through your initial application of 31 May 2021, you requested access to, I quote,

‘1- all correspondence (including email) between 1st January 2021 and 31st May 2021 between Commissioner Timmermans, President van der Leyen, and/or their cabinets and/or officials from DG Clima and Secretariat General on one hand and representatives of Concawe/FuelsEurope, IOGP (International Association of Oil & Gas Producers, Eurogas, Cefic (European Chemical Industry Council), Business Europe, ERT (European Roundtable of Industrialists), IETA (International Emissions Trading Association), Hydrogen Europe, CEPS, Eurogas, Kangaroo Group, American Chamber of Commerce, British Chamber of Commerce | EU & Belgium (Britcham), ZEP Zero Emissions Platform, European Energy Forum, Friends of Europe, Bruegel, International Chamber of Commerce, Global Oil and Gas Industry Association for Environmental and Social Issues (IPIECA), Oil Council, World Petroleum Council and/or Confindustria on the other, where the issues of COP26 was addressed.

¹ OJ L 345, 29.12.2001, p. 94.

² OJ L145, 31.05.2001, p. 43.

2 - list of meetings/videocalls/calls between between 1st January 2021 and 31st May 2021 between Commissioner Timmermans, President van der Leyen, and/or their cabinets and/or officials from DG Clima and Secretariat General on one hand and representatives of Concawe/FuelsEurope, IOGP (International Association of Oil & Gas Producers, Eurogas, Cefic (European Chemical Industry Council), Business Europe, ERT (European Roundtable of Industrialists), IETA (International Emissions Trading Association), Hydrogen Europe, CEPS, Eurogas, Kangaroo Group, American Chamber of Commerce, British Chamber of Commerce | EU & Belgium (Britcham), ZEP Zero Emissions Platform, European Energy Forum, Friends of Europe, Bruegel, International Chamber of Commerce, Global Oil and Gas Industry Association for Environmental and Social Issues (IPIECA), Oil Council, World Petroleum Council and/or Confindustria on the other, where the issues of COP26 was addressed.

3 - minutes of the meetings/videocalls/calls mentioned above.’

In its initial reply of 13 September 2021, the European Commission’s Directorate-General for Climate Action identified 49 documents falling within the scope of your request in an annex attached to the decision. It granted wide partial access to the identified documents, subject to the redaction of personal data under Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

As regards point ii) of your request, the Directorate-General for Climate Action informed you that the list of meetings of the Executive Vice-President Timmermans, his Cabinet and the Director-General of the Directorate-General for Climate Action with organisations and self-employed individuals is publicly available and provided you with the links.

Indeed, the Members of the Commission shall make public information on all meetings held by them and members of their Cabinet with organisations or self-employed individuals on issues relating to policy-making and implementation in the Union in accordance with the Commission Decision 2104/839/EU, Euratom of 25 November 2014³. The same obligation applies to officials of the European Commission having the status of Director-General in accordance with the Commission Decision 2104/838/EU, Euratom of 25 November 2014⁴.

Please note that the same obligation does not apply to lower-ranking officials, not forming part of the senior management of the European Commission.

The Directorate-General for Climate Action further informed you that since your request covers various topics, it has been split between different Commission services⁵. Please note that the present confirmatory decision provides the review of the reply of the Directorate-General for Climate Action.

In your confirmatory application, you challenge the absence of additional documents, as far as meetings between lower-ranking Commission officials and representatives of the

³ OJ L 343, 28.11.2014, p. 22–24

⁴ OJ L 343, 28.11.2014, p. 19–21

⁵ Gestdem 2021-3540 was handled by the Secretariat-General.

companies in question are concerned. In particular you argue that ‘in [your] original request [you] asked for meetings also of officials from DG Clima and Secretariat General. Commissioners, members of Cabinets and Directors Generals are a very limited part of the Commission officials, and lobbyists meets even more often with lower level officials whose meetings are not declared [...]. [You] accordingly urge [the Commission] to disclose the requested information in the shortest time possible.’

Against this background, the Secretariat-General of the European Commission has carried out a renewed search for the documents requested.

The Secretariat-General sent you a clarification request regarding the scope of your confirmatory application on 11 October 2021 and a reminder on 14 October 2021, to which you replied on 7 November 2021. You specified in your reply that your confirmatory application is limited to points ii) and iii) of your initial application, concerning the list of meetings of lower-ranking Commission officials with representatives of the companies in question and the minutes of those meetings.

Following this renewed search, I would like to inform you that the European Commission does not hold any documents that would fall within the scope of your request in addition to the documents that were already identified and partially disclosed at the initial stage.

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, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union.

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 1049/2001’⁶.

Other than the publicly available information on meetings of the Director-General – accessible via the public links – the Directorate-General for Climate Action does not hold any minutes or a list of meetings of its staff, not forming part of the senior management of the institution, with the representatives of the specific organisations and self-employed individuals in which you are interested.

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

⁶ Judgment of the Court of Justice of 11 January 2017, *Typke v European Commission*, C-491/15 P, EU:C:2017:5, paragraph 31.

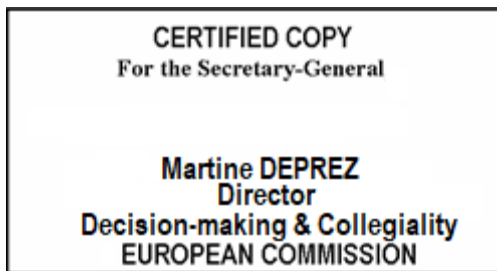
asserting that documents do not exist⁷. This presumption continues to apply, unless the applicant can rebut it by relevant and consistent evidence⁸. The Court of Justice, ruling on an appeal in Case C-440/18 P, has confirmed these conclusions⁹.

In your confirmatory application, you did not provide evidence that the institution is in possession of documents corresponding to the description provided in your confirmatory request.

Given that the European Commission does not hold any additional documents falling within the scope of 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

⁷ Judgment of the General Court of 23 April 2018, *Verein Deutsche Sprache v Commission*, T-468/16, EU:T:2018:207, paragraphs 35-36.

⁸ *Ibid.*

⁹ 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.