



EUROPEAN COMMISSION

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**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
2021/4656**

Dear Ms Verheecke,

I am writing in reference to your email of 8 August 2021, registered on 9 August 2021, 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’).

In your initial application of 21 July 2021, you requested access to, I quote, ‘for the period between 30 November 2015 to date, a list of all meetings held by DG Ener with the following representatives: Shell, BP, Total, ENI, Repsol, Galp and Equinor.’

By letter of 6 August 2021, the Directorate-General for Energy informed you that the European Commission does 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. You state that, I quote, ‘The DG should have kept records of all its meetings with external stakeholders. It is of good administrative practice to keep a record of all external meetings. I am only requesting a list of all those meetings.’

¹ OJ L 345, 29.12.2001, p. 94.

² OJ L 145, 31.05.2001, p. 43.

I note that in its initial reply of 6 August 2021, the Directorate-General for Energy informed you that the list of meetings of its Director-General with organisations and self-employed individuals is publicly available³. Indeed, an official of the European Commission having the status of Director-General has to make public information on meetings held with organisations or self-employed individuals on issues relating to decision-making and policy implementation in the Union in accordance with the Commission decision 2014/838/EU, Euratom of 25 November 2014⁴.

Moreover, I note that in its initial reply of 6 August 2021, the Directorate-General for Energy provided you with the list of meetings held with organisations or self-employed individuals of the predecessor of the current Director-General, which is also publicly available⁵. The two publicly available lists enable you to identify the meetings of the Director-General of the Directorate-General for Energy with the organisations of your interest in the relevant period. Please note that the same obligation does not apply to lower-ranking officials, such as the remaining members of the Directorate-General for Energy.

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 at the date you submitted your confirmatory request.

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.

I would like to refer in this respect to the judgment of the Court of Justice in Case C-127/13 P (*Strack v European Commission*), according to which ‘[n]either Article 11 of Regulation 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’⁶.

The above-mentioned conclusion has been confirmed in Case C-491/15 P (*Typke v European Commission*), where 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

³ <http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=61569260-525e-42f8-aa52-51d7bfc30d4f>

⁴ Commission Decision of 25 November 2014 on the publication of information on meetings held between Directors-General of the Commission and organisations or self-employed individuals, OJ L 343/19, 28.11.2014.

⁵ <http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=61569260-525e-42f8-aa52-51d7bfc30d4f&startDate=01-11-2014>

⁶ Judgment of the Court of Justice of 2 October 2014, *Strack v European Commission*, C-127/13 P, EU:C:2014:2250, paragraph 46.

document were based on information already appearing in existing documents held by it, falls outside the framework of Regulation No 1049/2001’⁷.

In the present case, while the Directorate-General for Energy keeps records of meetings with organisations and self-employed individuals, it does not hold any list of all meetings of its Director-General nor of its staff with the specific organisations and self-employed individuals concerned by your request in addition to the publicly available information on meetings of the Director-General, which is accessible via the abovementioned links. In this respect, I would like to confirm that compiling such a list in order to fulfil your request would equal to the creation of a new document in the meaning of the corresponding paragraphs of the judgments in Cases C-127/13 P and C-491/15 P as neither can such a list be extracted from a database by means of a normal or routine search⁸.

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 exist⁹. This presumption continues to apply, unless the applicant can rebut it by relevant and consistent evidence¹⁰. The Court of Justice, ruling on an appeal in Case C-440/18 P, has confirmed these conclusions¹¹.

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 statement¹².

Furthermore, you underpin your request with the following argument, I quote, ‘I see an overriding public interest in disclosure of the requested information as the meetings were all directly or indirectly related to climate action, an issue which affects all EU citizens and who is at the center of the EU's Green Deal, its flagship policy. The public should have the right to know how major decisions are taken on such a topic.’

Indeed, as specified in Articles 4(2) and 4(3) of Regulation (EC) No 1049/2001, access to the document requested shall be refused, unless there is an overriding public interest in disclosure. However, please note that this applies only to existing documents in possession of the institution. Given the absence of any documents corresponding to the description given in your application in possession of the European Commission, invoking an overriding public interest is not applicable in this case.

⁷ Judgment of the Court of Justice of 11 January 2017, *Typke v European Commission*, C-491/15 P, EU:C:2017:5, paragraph 31.

⁸ *Typke v European Commission* judgment, cited above, paragraph 47; Judgment of the General Court of 22 October 2011, *Dufour v ECB*, T-436/09, EU:T:2011:634, paragraphs 103 and 153.

⁹ Judgment of the General Court of 23 April 2018, *Verein Deutsche Sprache v Commission*, T-468/16, EU:T:2018:207, paragraphs 35-36.

¹⁰ *Ibid.*

¹¹ 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.

¹² *Verein Deutsche Sprache v Commission* judgment, cited above, paragraph 37.

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

