



Médiateur européen

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European Parliament

The President

Date d'arrivée

Ms Emily O'REILLY
European Ombudsman
1 Avenue du Président Robert Schuman
CS 30403
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D 307520 15.11.2021

Dear Ms O'Reilly,

Following your letter of June 30, 2021, sent as an initial step of your Strategic Initiative SI/4/2021/TE on "How EU institutions, bodies, offices and agencies record text and instant messages sent/received by staff members in their professional capacity", please find the Parliament's reply to your questions in annex.

Yours sincerely,

David Maria SASSOLI

ANNEX

1) On the applicable rules:

- **Does the European Parliament's record management decision cover text and instant messages, sent or received through professional and/or personal devices?**

The European Parliament document management framework is based on three main legal texts:

- The Bureau decision of 2 July 2012 on the rules on document management in the European Parliament
- The Implementing measures – Decision of the Secretary General of 25 October 2013
- The Bureau decision of 1 October 2018 on Provisions on electronic documents.

Instant messages are not covered specifically in any of them. These decisions do not focus on formats but on the nature of documents instead. Hence, according to Article 2(f) of the Bureau Decision of 2 July 2012, a document is:

“any content written on paper or stored in electronic form or as a sound, visual or audio-visual recording that is drawn up or received by the European Parliament, by one of its representatives or by a member of its staff in the performance of his or her duties and that concerns the activities of the European Parliament”.

Article 3.2 of the Bureau Decision of 1 October 2018 defines an electronic document as “any document stored in electronic form, in particular text or an audio, visual or audio-visual recording”.

On top of that, Article 7 of the Bureau Decision of 1 October 2018, states that an electronic document “should not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in electronic form”. Article 11.1 foresees that the “transmission of documents by the European Parliament to an internal or external recipient may be carried out by the communication technique best adapted to the circumstances of the case”, when no specific means of transmission or formalities connected with transmission are required by the applicable EU or national provisions or by an agreement between the parties. Finally, Article 8 sets the validity of electronic documents when no signed original is required “if the person from whom it emanates is duly identified and the document is drawn up under such conditions as to guarantee the integrity of its contents and of the relevant metadata and is stored and archived in accordance with the conditions laid down in Article 12”.

- **Does Parliament's record management decision set out criteria/principles for the recording of text and instant messages?**

As said, text and instant messages are not explicitly mentioned in the EP records management decision. However, should they be considered documents, according to Article 3 of the Bureau Decision of 2 July 2012, a document must be only registered if “(a) it contains important information that is not short-lived, and (b) it binds the European Parliament or may require action or follow-up by the European Parliament”.

- **Does Parliament's record management decision set out how text and instant messages should be recorded by staff members?**

Article 12.1 of the Bureau Decision of 1 October 2018 lists the following modalities for the storage of electronic documents:

"(a) the document shall be preserved in the form in which it was drawn up, sent or received or in a form which preserves the integrity not only of its contents but also of the relevant metadata; (b) the contents of the document and the relevant metadata must be readable by any person who is authorised to have access to them; (c) as regards a document sent or received electronically, information which makes it possible to determine its origin and destination and the date and time of despatch or receipt are part of the minimum metadata to be preserved; (d) as regards electronic procedures managed by computer systems, information concerning the formal stages of the procedure must be stored and archived under such conditions as to ensure that those stages and the authors and participants can be identified; (e) the operations required to ensure the legibility of the electronic document over time do not constitute an alteration of its contents or its form when they are traced and result in the generation of a new electronic fingerprint copy. This condition is presumed to be fulfilled by the use of an electronic time stamp, an advanced electronic seal or an advanced electronic signature".

Besides, the Annex I of the implementing measures of the Decision on document management establishes the minimum set of metadata that will ensure the authenticity, integrity and legibility over time of the electronic documents registered in the system (including registration, filing, destruction and transfer metadata).

2) On the implementation of the applicable rules:

- **How is the record management decision, as regards text and instant messaging, implemented? For example, has the European Parliament issued relevant guidelines to staff or does it provide training on this matter to staff?**

There are currently no specific guidelines nor training regarding the handling of instant messages from a records management point of view (capturing materials and ensure their authenticity and reliability over time).

Regarding proper use of IM technologies, and in the context of teleworking, DG ITEC has recently reminded not to use Signal or any other messaging app to exchange EU classified information and other confidential information as defined in the rules governing the treatment of confidential information, Bureau Decision of 15 April 2013 on confidential information.

- **In practice, has the European Parliament recorded text and instant messages? If so, could Parliament please provide examples?**

No instant message has been captured in the systems used to register documents: GEDA and HERMES.

- **Has the European Parliament already received requests for public access to text and/or instant messages, under Regulation 1049/2001, or has Parliament identified text and/or instant messages as falling within the scope of an access to documents request? If so, could the European Parliament please give examples?**

The Transparency Unit is the current responsible service to deal with the Access to Information requests received in the European Parliament. During the last five years only two applications have expressly referred to text or instant messages in the context of broader requests for public access to several types of documents and correspondence. At the same time, many applications for public access to documents which originate from third party websites, such as asktheeu.eu and fragdenstaat.de, concern access to 'all documents' on a given subject, and therefore potentially could include text or instant messages in their scope.

Example 1

"The European Parliament has invited UK Prime Minister Theresa May to address plenary. Please provide all correspondence between the Parliament and the UK Cabinet Office regarding this invitation whether it be in paper or electronic form, inclusive of but not limited to e-mails, texts and Whats App messages." (case A(2018)7550)

Example 2

*"Dear European Parliament,
Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information: All documents in the broadest sense, including email, sms, whatsapp etc, related to the collaboration between the European Parliament's Information Office in Milano and Euradopt."* (case A(2018)5156)

Example 3

*"Antrag nach EU-Verordnungen 1049/2001 sowie 1367/2006
Sehr geehrte Damen und Herren,
auf Basis der Verordnungen 1049/2001 sowie 1367/2006 bitte ich Sie um Übersendung von Dokumenten, die folgende Informationen enthalten: EU-Export von 100 Millionen Impfdosen nach Japan für die kommende Freizeitaktivität "Olympiade". [...] Darunter E-Mails und generell, was Sie so haben. [...]"* (case A(2021)3609)

Up to now, Parliament has not identified any text or instant messages as falling within the scope of an application for public access to documents.

- **When receiving public access requests which cover, explicitly or implicitly, text and/or instant messages, how does the European Parliament search for relevant 'documents'? Has Parliament put mechanisms in place (for instance, guidelines or instructions) to assist staff in searching for such 'documents'?**

According to Article 9(2) of the Bureau Decision of 28 November 2001 adopting the Rules Governing Public Access to European Parliament documents:

"Where the application relates to a document drawn up by the European Parliament to which one of the exceptions laid down in Article 4 of Regulation (EC) No 1049/2001 is applicable, or where the document in question needs to be identified and found, the unit responsible shall contact the service or body that is the originator of the document, which shall suggest the course of action to be taken within five working days"

Hence, the Transparency Unit asks the service involved via email to identify all the documents that may fall within the scope of the request.

The European Parliament has not put in place so far any specific mechanism to assist staff in searching for instant messages.