



EUROPEAN COMMISSION  
SECRETARIAT-GENERAL

Directorate B

Brussels, **03 FEB. 2015**  
SG/B.3/MIA-DCB

Ms Vicky Cann  
CEO  
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B-1050 Brussels

By e-mail:

ask+request-1691-fdde0b16@asktheeu.org

**Subject: Your application for access to documents in accordance with Regulation 1049/2001– Ref. GestDem 2015/337**

Dear Ms Cann,

We refer to your e-mail dated 14 January 2015 and registered on the same date under the above-mentioned reference number.

*In your e-mail, you request "copies of all applications and accompanying materials made by Connie Hedegaard to become chairman of the Kann Foundation, as well as all other applications by Ms Hedegaard which seek Commission authorisation for new professional activities under the commissioner code of conduct. I would further like to request any emails, correspondence and meeting notes which relate to these applications; all opinions from the ad hoc ethical committee on each case; and copies of the Commission's final decision in each case."*

I have identified 11 documents falling within the scope of your request in so far they are related to the decision taken by the Commission on 16 December 2014 authorising five post-mandate activities envisaged by former Commissioner Ms Hedegaard:

1. E-mail of Ms Hedegaard to Ms Day of 11.11.2014 [Ref. Ares(2014)3749987];
2. Note of Ms Day to Ms Hedegaard of 21.11.2014 [Ref. Ares(2014)3890470];
3. Letter of Ms Hedegaard to Ms Day of 26.11.2014 [Ref. Ares(2014)3961852 - 27/11/2014];
4. Note of Ms Day to the Ad Hoc Ethical Committee of 02.12.2014 [Ref. Ares(2014)4025675];
5. Note of the Ad Hoc Ethical Committee of 05.12.2014 [Ref. Ares(2014)4084497];
6. Letter of Ms Day to Ms Hedegaard of 11.12.2014 [Ref. Ares(2014)4162493];
7. LS Consultation [Ref Ares (2014)4126365];

8. Commission Decision C(2014) 9879 of 05.12.2014;
9. PV (2014) 2110 of 16 December 2014;
10. Letter of 16.12.2014 [Ref. Ares(2014)4235347];
11. Note of Ms Day to Members of the Ad-Hoc Ethical Committee of 17.12.2014 [Ref. Ares(2014)4246874]

You will find a detailed list enclosed.

I would like to call your attention to the fact that document n° 4 contains in its enclosures "templates" also called "information fiches" to the attention of the Ad Hoc Ethical Committee. The information in these documents can be found in the opinion of the Committee and in the Commission's decision disclosed below. Consequently, I understand that the content of these fiches are of no further interest to you. If you do not share this view, please let us know.

## **1. PUBLIC DOCUMENTS**

Document n° 9 contains the extract of the minutes of the Commission meeting in which the decision on Ms Hedegaard's post-mandate activities was adopted. Please note that the minutes are already available to the public and therefore, a copy is not enclosed.

## **2. CONCLUSIONS UNDER REGULATION 1049/2001**

Following the examination of your request and of the documents concerned, I am pleased to grant you:

- Full access to the cover note to document n° 11. Please note that the deleted parts contain information on decisions regarding other former Commissioners, which are not covered by your request and therefore, fall outside its scope. However, these parts of the document are covered by the scope of your remaining requests (n° 2015/338, 2015/339, 2015/348 and 2015/349) and will be addressed in the corresponding replies;
- Partial access to documents n° 1, n° 2, n° 3, n° 5 and n° 8 as well as to the draft decision attached to document n° 7. Please note that the note attached to document n° 6 is document n° 5 and the documents attached to documents n° 10 and n° 11, correspond to document n° 8; and,
- Partial access to the cover notes to documents n° 4, 6 and 10 and to the cover-e-mails to document n° 7.

You will find copies enclosed.

However, I must inform you that no access can be granted to the deleted parts of the above-mentioned documents. The reasons for the refusal are set out below.

### **2.1 Protection of the decision-making process**

The deleted parts of the above-mentioned documents contain information concerning a sixth envisaged post-office activity of former Commissioner Ms Hedegaard which has

not been yet submitted to the College for decision. Therefore, the decision-making process is still ongoing.

The deleted parts of the documents which are related to this notification are covered by the exception foreseen in Article 4(3), first subparagraph, (protection of the decision-making process) of Regulation 1049/2001. This provision states that ..."*[a]ccess to a document drawn up by an institution for internal use or received by an institution which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure*".

Disclosure of these parts would lead to external interferences with the ongoing decision-making process. External pressure would be detrimental to the right of the Commission to protect its "space to think" in this matter.

## **2.2 Protection of privacy and the integrity of the individual**

Additionally, the deleted parts of the documents concerning this post-mandate activity not yet authorised by the College contain information communicated to the Commission on the basis of the Code of Conduct for Commissioners, including third parties data.

Disclosing the information provided by the former Commissioner in this context, would reveal personal data and information exchanged in confidence, in the framework of the treatment of a specific file. Therefore, disclosing at this stage the information provided may undermine the privacy of the concerned Commissioner and third parties. This is *a fortiori* the case if the notification is withdrawn or if the Commission takes a negative decision on the envisaged activity.

Please bear in mind that it is not possible to grant a further partial access to the deleted parts of the documents in the enclosed list related to this activity, which has not yet been authorised. Indeed, in the event that the above-mentioned parts were to be disclosed, third parties with some knowledge of the facts and events could easily identify the Commissioner envisaged activity and the entities concerned.

In its judgment in the *Bavarian Lager* case<sup>1</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001<sup>2</sup> (hereinafter the 'Data Protection Regulation') becomes fully applicable.

Article 2(a) of Data Protection Regulation provides that "*personal data*" shall mean any information relating to an identified or identifiable person [...].As the Court of Justice

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<sup>1</sup> Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, European Commission v The Bavarian Lager Co. Ltd.

<sup>2</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, Official Journal L 8 of 12.1.2001

confirmed in Case C-465/00 (*Rechnungshof*)<sup>3</sup>, *there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of "private life."*

The concerned documents contains elements on the envisaged professional activities which undoubtedly constitute personal data in the meaning of Article 2(a) of Regulation (EC) No 45/2001, as they reveal information about an identified or an identifiable person. According to Article 8(b) of the Data Protection Regulation, which is fully applicable in this case, personal data shall only be transferred to recipients if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced.<sup>4</sup> Those two conditions are cumulative.<sup>5</sup>

I consider that in the present case the necessity of disclosing the aforementioned personal data to you has not been established in your request.

Consequently, access to personal data contained in the relevant parts of the above-mentioned documents has to be refused on the basis of the exception provided for in Article 4 (1) (b) of Regulation 1049/2001.

Please note that the above-mentioned considerations apply equally to the deleted parts of documents n° 2, n° 6 and n°10, namely the letters of the Secretary-general to the former Commissioner informing her on the decisions taken by the Commission regarding her notifications or requesting complementary information. These documents contain the address and/or the e-mail of the former Commissioner and for obvious reasons this personal data is covered by the exception provided for in Article 4 (1) (b) of Regulation 1049/2001. This is also the case of the deleted parts in the cover e-mails accompanying document n° 7 and of some of the deleted parts documents 1 and n° 5 which contain personal data of the former Commissioner and/or of Commission officials.

The exception laid down in Article 4(3), first subparagraph of Regulation 1049/2001 must be waived if there is an overriding public interest in disclosure.

Such an interest, firstly, has to be public and, secondly, has to outweigh the damage caused by the release, i.e. it must outweigh the interest protected by virtue of Article 4(3), first subparagraph of Regulation 1049/2001.

The Commission does not find, at this point in time, that there is a public interest in disclosing the documents that would outweigh the risk of undermining the protection of the Commission's decision-making process.

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<sup>3</sup> Judgment of the Court of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between Rechnungshof and Österreichischer Rundfunk, paragraph 73.

<sup>4</sup> Cf. Judgment of the Court of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between Rechnungshof and Österreichischer Rundfunk, paragraph 73.

<sup>5</sup> Judgment of the Court (Grand Chamber) of 29 June 2010 in case C-28/08 P, *Commission v Bavarian Lager*, paragraphs 56, 63, 68, 76-79.

If you wish to appeal against this decision, you should write to the Commission Secretary-General at the address [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu). You have fifteen working days from receipt of this letter in which to appeal.



Marianne Klingbeil  
Director SG B f.f.

Annexes

Cc: [SG-DOSSIERS-ACCES@ec.europa.eu](mailto:SG-DOSSIERS-ACCES@ec.europa.eu)