



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate B

Brussels,
SG/B.3/MIA-DCB

Ms Vicky Cann
CEO
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**Subject: Your application for access to documents in accordance with
Regulation 1049/2001– Ref. GestDem 2014/5017**

Ref: My reply of 23 December 2014 [Ref. Ares(2014)4340257]

Dear Ms Cann,

Further to the above-mentioned reply, I am pleased to grant you full access to the following documents:

1. Letter of Ms Reding to Mr Barroso of 09.09.2014 and annex [Ref. Ares(2014)2951195];
2. Letter of Ms Reding to Mr Barroso of 30.09.2014 and annex [Ref. Ares(2014)3220352];
3. Letter of Ms Reding to Mr Barroso of 26.09.2014 and annex [Ref. Ares(2014)3199477];
4. Letter of Ms Reding to President Juncker of 17.11.2014 and annex [Ref. Ares(2014)3860106]
5. Letter of Mr Nelli-Feroci to Mr Barroso of 30.09.2014 [Ref. Ares(2014)3221004];
6. Letter of Mr Nelli-Feroci to Mr Barroso of 24.10.2014 [Ref. Ares(2014)3536283];
7. Letter of Mr. Potocnik to Ms Day of 30.10.2014 [Ref. Ares(2014) 3603986];

8. Letter of Mr. Potocnik to Ms Day of 12.11.2014 [Ref. Ares(2014) 3798232];

Partial access is granted to the following documents:

9 E-mail of Mr Semeta to Ms Day of 13.11.2014 and annex [Ref. Ares(2014)3791725];

10 E-mail of Mr Piebalgs to Ms Day of 19.11.2014 and E-mail reply to SG request for complementary information [Ref. Ares(2014)3868877];

Finally I would like to inform you that in the context of this request, my services have identified several further documents, namely the consultations addressed by the Secretariat General to the Legal service and the corresponding replies of the LS on the draft decisions regarding the post-mandate activities mentioned in the above-mentioned letters. These documents are:

11 E-mail of SG of 28 October 2014 and reply of LS of the same date [Ref. Ares(2014)3538088];

12 E-mail of SG of 28 November 2014 [Ref. Ares(2014)3990338] and reply of LS of 4 December 2014 [Ref. Ares (2014)4065578];

13 E-mail of SG of 28 October 2014 and reply of LS of the same date [Ref. Ares(2014)3533942];

14 E-mail of SG of 20 November 2014 [Ref. Ares(2014)3869715] and reply of LS of 21 November 2014 [Ref. Ares(2014)3929396];

15 E-mail of SG of 4 December 2014 [Ref. Ares(2014)4062395] and reply of LS of 5 December 2014 [Ref. Ares (2014)4079975];

16 E-mail of SG of 4 December 2014 and reply of LS of the same date [Ref. Ares(2014)4476916];

The documents attached to the consultations in documents n° 11 to 16 are the drafts of the decisions C(2014)8230, C(2014)9516, C(2014)8231, C(2014)9520, C(2014)9025 and C(2014)9518. The final versions of these documents was disclosed in the framework of the previous reply of 23 December 2014 to the current request (see documents n° 7, 12, 20, 39, 47 and n° 57).

Partial access is also granted to these documents. You will find the copies enclosed.

However, access to the deleted parts of documents n° 9 and n° 10 to the cover e-mails to documents n° 11 to 16 has to be refused for the following reasons.

The deleted parts of documents n° 9 and n° 10 contain the e-mails of the former Commissioners and for obvious reasons this is personal data 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 e-mails accompanying documents n° 11 to 16 and some of the deletions in the e-mails in documents n° 9 and 10, which contain the names telephone numbers and e-mails addresses of the Commission's officials in charge of the file and in

the case of document n° 9 of a third person. Disclosing this information would reveal personal data and may undermine the privacy of the concerned former Commissioners and third persons as well as of the Commission officials in charge of the file.

In its judgment in the *Bavarian Lager* case¹, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001² (hereinafter the 'Data Protection Regulation') becomes fully applicable.

The concerned documents contain elements 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.³ Those two conditions are cumulative.⁴

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.

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. 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

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

² 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

³ 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.

⁴ 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.