



EUROPEAN COMMISSION
Secretariat-General

The Secretary-General

Brussels
SG.B.4/FB/rc - sg.dsg2.b.4(2015)3609237

By registered mail:

Mr Klaus ZINSER
Hauptstraße 8
88427 Bad Schussenried
Germany

Copy by email:

ask+request-1886-
f8785cbb@asktheeu.org

**DECISION OF THE SECRETARY GENERAL ON BEHALF OF THE COMMISSION PURSUANT
TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2015/2031**

Dear Mr Zinser,

I refer to your e-mail of 24 July 2015, registered on 27 July 2015, in which you make a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (hereafter 'Regulation 1049/2001').

1. SCOPE OF YOUR REQUEST

Through your initial application of 7 April 2015, addressed to the Directorate-General Human Resources and Security (DG HR), you requested access to *the official Curriculum Vitae* of:

- *SERDYNska J. Legislative Officer*
- *SHOTTER Michael Head of Unit*
- *DE LUCA P. Team Leader External relations and international cooperation in civil justice*

¹ Official Journal L 345 of 29.12.2001, p. 94.

- MICHOU Paraskevi Director
- NEMITZ Paul Director
- ADAMO Chiara Head of Unit
- STOCKWELL N. Policy Officer - Rights of the child
- TUIITE M. Policy Officer
- BOULANGER Marie-Helene Head of Unit (Union Citizenship and Free Movement)
- RINGOU N. Deputy Head of Unit - Deputy Head of Unit
- SAASTAMOINEN Salla Director
- Reicherts, Martine (Earlier EU Commissioner for Justice)
- Reding, Viviane (Earlier EU Commissioner)
- Selmayr, Martin (Earlier assistant to EU Commissioner Reding)
- McGuinness Mairead Child Mediation
- Emily O Reilly EU Ombudsman

You also asked to be provided with *papers showing financial investments and interests (for sure they were published for the EU Comissioners).*

Furthermore, you requested certain information, i.e. you stated that you *would like to know*

- *the total headcount of DG JUST (only decision makers who are in the EU Whoiswho) and how many of the EU Commission Members of DG JUST have British nationality,*
- *the names and position of all EU Commission members who are current and past Members of EJM.*

The reference to *EJM* has been interpreted as referring to the EJM-civil (European Judicial Network in Civil and Commercial Matters) on whose meetings' participants you introduced a separate application for access to documents².

In its initial reply of 3 July 2015, DG HR stated that the Commission were not in the possession of *official Curriculum Vitae*s of Commission officials. It explained that there is the possibility for Commission officials to establish an 'e-CV' in the Commission's IT system but which is not mandatory and which belong to the personnel files of the staff members concerned. DG HR refused to grant access to any existing 'e-CV' falling under the scope of your request, based on the exception of Article 4(1)(b) of Regulation 1049/2001 (*protection of the privacy and integrity of the individual*). Concerning your request for *papers showing financial investments and interests* of Members of the

² Registered under number GESTDEM 2015/1298. Access to the names of the meetings' participants was refused based on the exception of Article 4(1)(b) of Regulation 1049/2001 (*protection of the privacy and integrity of the individual*).

Commission, DG HR provided you with the link to the respective declarations of interests which include financial statements.

Through your confirmatory application, you request an internal review of this position.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

Having carried out a renewed search for the documents requested and a detailed assessment of your request in light of the provisions of Regulation 1049/2001, I am pleased to inform you that three CVs to which you request access are publicly available at the following links:

- CV of Director-General Martine Reicherts:
http://ec.europa.eu/civil_service/about/who/dg_en.htm,
- CV of former Member of the Commission Viviane Reding:
http://ec.europa.eu/archives/commission_2010-2014/reding/about/cv/index_en.htm
- CV of Head of Cabinet of President Juncker and former Head of Cabinet of Commissioner Viviane Reding, Martin Selmayr:
http://ec.europa.eu/archives/commission_2010-2014/reding/pdf/cv/martin_selmayr_en.pdf

Concerning the CV of the European Ombudsman Emily O'Reilly, please note that the Commission is not in possession of an *official Curriculum Vitae*. I suggest you to contact the Ombudsman directly via the following online contact form:
<http://www.ombudsman.europa.eu/shortcuts/contacts.faces>.

Regarding the 'e-CVs' of the remaining officials to which you request access, I regret to inform you that the refusal of DG HR has to be confirmed for the reasons set out below.

Article 4(1)(b) of Regulation 1049/2001 provides that *access to documents is refused where disclosure would undermine the protection of privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data*.

In its judgment in the *Bavarian Lager* case³, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001⁴ (hereinafter the 'Data Protection Regulation') becomes fully applicable.

Article 2(a) of the Data Protection Regulation provides that '*personal data*' shall mean any information relating to an identified or identifiable person [...]. As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*)⁵, there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of 'private life'. The data included in the 'e-CVs' constitute personal data in the meaning of Article 2(a) of the Data Protection Regulation. In fact, a curriculum vitae is personal data per se as being unique for every person by representing individual life careers.

Pursuant to Article 8(b) of the same Regulation, the Commission can only transmit personal data to a recipient subject to Directive 95/46/EC⁶ 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. Those two conditions are cumulative.⁷ In your confirmatory application, you refer to the explanations in your initial application concerning the reasons for why the requested personal data should be disclosed. In your initial application you state that you are *worried because of conflicts of interests in the EU Commission DG JUST and others [sic!]*. You do neither substantiate this allegation nor provide any further explanation on the matter. I therefore consider that you do not demonstrate the need for obtaining the personal data concerned by any express and legitimate justifications or convincing arguments. The necessity of disclosing the personal data of these individuals has therefore not been established in the present case.

Based on the above, I conclude that the 'e-CVs' must be protected pursuant to Article 4(1)(b) of Regulation 1049/2001 (*protection of the privacy and integrity of the individual*).

Please note that the exception of Article 4(1)(b) has an absolute character and does not envisage the possibility to demonstrate the existence of an overriding public interest.

³ Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, *European Commission v The Bavarian Lager Co. Ltd.*

⁴ 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

⁵ 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.

⁶ European Parliament and Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Official Journal L 281 of 23.11.1995.

⁷ Judgment of the Court of Justice of 29 June 2010, *Bavarian Lager*, quoted above, paragraphs 77-78.

3. ANSWERS TO REQUESTS FOR INFORMATION

As mentioned above, in your application for access to documents you ask the Commission for certain information. These requests for information fall outside the scope of Regulation 1049/2001 regarding public access to *documents*. I am nevertheless pleased to provide you with the following additional information:

Regarding *the total headcount of DG JUST (only decision makers who are in the EU Whoiswho) and how many of the EU Commission Members of DG JUST have British nationality*, DG HR sent you the link to DG JUST's organigram showing the Commission officials in management positions in the Directorate-General concerned. The total number of active officials and temporary agents in DG JUST (as of 1 July 2015) is 392 of which 19 are of British nationality. These staff figures are publicly available at the following website: http://ec.europa.eu/civil_service/about/figures/index_en.htm.

Concerning your request of the *names and position of all EU Commission members who are current and past Members of EJC* we already explained to you in our reply of 25 June 2015 to your confirmatory application registered under number GESTDEM 2015/1298 that the ECJ-civil is a flexible, non-bureaucratic structure which supports national central authorities and facilitates contacts between different courts through a network of national contact points. We thus understand that you are interested in the names of Commission staff having participated in EJC-civil meetings over the past years. Please find below, in chronological order, the names of Commission participants to EJC-civil meetings between 2009 and 2014, which at the time of the meeting were in senior management positions and therefore can be disclosed:

- Jacques BARROT, Vice-President of the Commission: EJC-civil meeting of 14-15 December 2009, The Hague,
- Françoise LE BAIL, Director-General of DG JUST, and Paraskevi MÍCHOU, Director of Directorate A of DG JUST: EJC-civil meeting of 20 January 2011, Brussels,
- Françoise LE BAIL, Director-General of DG JUST, and Paraskevi MÍCHOU, Director of Directorate A of DG JUST: EJC-civil meeting of 9-10 February 2012.

4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation 1049/2001, I have considered the possibility of granting partial access to the documents requested. However, for the reasons explained above, no meaningful partial access is possible without undermining the interests described above.

Consequently, I have come to the conclusion that the documents requested are covered in their entirety by the invoked exceptions to the right of public access.

5. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may, under the conditions of Article 263 TFEU, bring proceedings before the General Court or, under the conditions of Article 228 TFEU, file a complaint with the European Ombudsman.

Yours sincerely,

A handwritten signature in black ink, appearing to read "po Marie Henry".

Catherine Day