



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate B

Brussels,
SG/B.3/MIA-DCB

Ms Vicky Cann
CEO
Rue d'Edimbourg 26
B-1050 Brussels

By e-mail:

ask+request-2136-f53cc3aa@asktheeu.org

Subject: Your application for access to documents in accordance with Regulation 1049/2001– Ref. GestDem 2015/3715

Dear Ms Cann,

We refer to your e-mail dated 13 July 2015 and registered on 14 July 2015 under the above-mentioned reference number.

In your e-mail, you request ..."copies of all subsequent applications by former Commissioner Androulla VASSILIOU which seeks Commission authorisation for new professional activities under the commissioner code of conduct, including as a Member of the Board of Trustees of the Cyprus Research and Educational Foundation and as Representative of the Republic of Cyprus on the High Council of the European University Institute. 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 14 documents falling within the scope of your request.

1. E-mail of Ms Vassiliou to Ms Day of 09.02.2015 [Ref. Ares(2015)537441];
2. E-mail of Ms Vassiliou to Ms Day of 04.03.2015 [Ref. Ares(2015)955116];
3. Note of Ms Day to the Ad Hoc Ethical Committee of 18.02.2015 [Ref. Ares(2015)692413];
4. Note of Ms Day to the Ad Hoc Ethical Committee of 09.03.2015 [Ref. Ares(2015)1037919];
5. Opinion of the Ad Hoc Ethical Committee of 27 February 2015 (first part) [Ref. Ares(2015)884852];

6. Opinion of the Ad Hoc Ethical Committee of 27 February 2015 (second part) [Ref. Ares(2015)884852];
7. Opinion of the Ad Hoc Ethical Committee of 10 March 2015 [Ref. Ares(2015)1055516];
8. E-mail exchange between Ms Day and Ms Vassiliou of 02.03.2015 [Ref. Ares(2015)1026664];
9. LS Consultation [Ref. Ares(2015)979005];
10. LS Consultation [Ref Ares(2015)1100869];
11. Commission Decision C(2015)1611 of 13.03.2015;
12. PV(2015) 2120th meeting of 18.03.2015;
13. Letter of Ms Day to Ms Vassiliou of 18.03.2015 [Ref.Ares(2015)1197937];
14. Note of Ms Day to the Ad Hoc Ethical Committee of 18.03.2015 [Ref. Ares(2015)1198018];

You will find a detailed list enclosed.

The disclosed parts of the above-mentioned documents are related to the decision taken by the Commission in its 2120th meeting of 18 March 2015 authorising three post-mandate activities envisaged by former Commissioner Ms Vassiliou (Member of the Board of Trustees of the Cyprus Institute (Cyl), Member of the Board of Trustees of the Cyprus Research Educational Foundation and Member of the High Council of the European University Institute).

I would like to call your attention to the fact that document n° 3 and 4 contain 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 interest to you. If you do not share this view, please let us know.

Finally, I must inform you that the requests for authorisation of two post-mandate activities mentioned in the e-mail of 9 February 2015 (document n° 1) have been formally withdrawn by former Commissioner MsVassiliou.

Taking into account this fact, I have carefully assessed your request and the above-mentioned documents under the provisions of Regulation 1049/2001 and I have come to the conclusions set out below.

Following the examination of your request and of the documents concerned, I have to

- refuse to grant further partial access to the non disclosed parts of documents n° 1 to 4, 6, 7, 9 to 11 and 13. You will find copies enclosed;
- refuse access to the entirety of documents n° 5 and 8;
- grant full access to the cover note in document n° 14. You will find a copy enclosed.
- Finally, document n° 3 contains the extract of the minutes of the Commission meeting in which the decision on Ms Vassiliou's post-mandate activities was

adopted. Please note that the minutes are already available to the public and therefore, a copy is not enclosed.

The reasons for the refusal of access to the above-mentioned documents and parts thereof, are set out below.

The deleted parts of the documents n° 1 to 4, 6, 7, 9 to 11 and 13 and the entirety of documents n° 5 and 8 concern two post-mandate activities that have not been submitted to the College for a decision and contain information communicated to the Commission on the basis of the Code of Conduct for Commissioners.

The protection of this kind of information has to be reinforced in those cases where the request is withdrawn, before the College has taken a decision.

The request for authorisation should be considered as a personal initiative to exercise a professional activity and all information in this regard including the reasons behind her decision to withdraw her requests is part of the private life of the former Commissioner. This choice remains personal and of a private nature. This appraisal is to be extended to the personal opinions of the former Commissioner contained in the above-mentioned documents.

Therefore, the non-disclosed parts of documents n° 1 to 4, 6, 7, 9 to 11 and 13 and the entirety of documents n° 5 and 8 containing the information on the post-mandate activities in question should remain private in so far that the former Commissioner has decided to withdraw her requests and therefore, the procedure foreseen in the Code was interrupted before the College could examine the requests and the information gathered on these issues and take a decision.

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.

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

The concerned documents and parts thereof contain 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

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 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.

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.⁴ Those two conditions are cumulative.⁵

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 non-disclosed parts of the above-mentioned documents and in the entirety of documents n° 5 and 8 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 certain deleted parts of documents n° 1, 2, 8 and n° 13. These parts of the documents contain the e-mail of the former Commissioner 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 cover e-mails accompanying document n° 9 and 10 and of some of the deleted parts in documents n° 6 and 7 which contain personal data of Commission officials.

Finally, granting partial access to documents n° 5 and 8 or extending the access already granted to documents n° 1, 2, 8 and n° 13 is not possible, since third parties with some knowledge of the facts and events could easily identify the envisaged activities and the entities concerned.

Moreover, any attempt to grant or to extend partial access would lead to releasing parts of text with no substantial content.

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

⁴ 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.

⁵ 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.