



EUROPEAN COMMISSION
Secretariat-General

Directorate B
The Director

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Mrs Vicky CANN
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Subject: Your application for access to documents pursuant to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents – ref. GestDem 2016/4388

Dear Ms Cann,

I refer to your e-mail of 5 August 2016, registered on the same day, by which you make a request pursuant to Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹.

You request access to *all exchanges between the President Barroso, his office and his Cabinet, with Goldman Sachs from 1 January 2012 to 31 October 2014*.

The Commission services have identified the following documents as falling under the scope of your request:

1. Email exchanges between Goldman Sachs (GS) and the office of President Barroso dated 6 September 2012 to 21 January 2013 [ref. Ares (2013) 73464];
2. Email from GS to the Office of President Barroso sent on 20 May 2013, with reply sent on 21 May (two emails) [ref. Ares (2013) 1220511];
3. Letter from GS to President Barroso dated 10 July 2013 [ref. Ares (2013) 2635625];

¹ Official Journal L145 of 31.05.2001, p.43.

4. Email from GS to President Barroso dated 2 August 2013 [ref. Ares (2013) 2827082];
5. Letter from GS to President Barroso sent on 30 September 2013 [ref. Ares (2013) 3174817];
6. Letter from President Barroso and Vice-President Kroes sent on 14 January 2014 [ref. Ares (2014) 82652];
7. Email from GS to the office of President Barroso sent on 23 April 2013, with reply sent on 24 April [ref. Ares (2014) 1282122];
8. Email from GS to the office of President Barroso sent on 17 June 2014 [ref. Ares (2014) 1982015];
9. Letter from the office of President Barroso to GS sent on 8 July 2014 [ref. Ares (2014) 2256267];
10. Letter from GS to President Barroso dated 13 December 2013 [ref. Ares (2013) 3747360];
11. Letter from the office of President Barroso to GS sent on 28/01/2014 [ref. Ares (2014) 191353].

Having examined the documents requested under the provisions of Regulation No 1049/2001, I have decided to grant access to all eleven documents, with the exception of:

- the personal data (names and phone numbers) of the 'contact persons' of Goldman Sachs which are mentioned in the documents and which do not occupy any senior management position;
- the name and contact details of the official who received or were in copy of the documents and who do not occupy any senior management position.

These personal data must be protected pursuant to Article 4(1)(b) of Regulation 1049/2001 (protection of the privacy and integrity of the individual), as explained below.

Article 4(1)(b) provides that *the institutions shall refuse access to a document 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 accordance with the *Bavarian Lager* ruling², when a request is made for access to documents containing personal data, Regulation 45/2001³ becomes fully applicable.

Article 2(a) of Regulation 45/2001 defines personal data as *any information relating to an identified or identifiable natural person [...]; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or*

² Judgment in *Bavarian Lager*, C-28/08 P, EU:C:2010:378

³ 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.

to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity.

*Pursuant to settled case law, the concept of private life' must not be interpreted restrictively and [...] there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life.*⁴

The above-mentioned names and contact details clearly constitute personal data in the meaning of Article 2(a) of the Data Protection Regulation.

In accordance with Article 8(b) of Regulation 45/2001, personal data shall only be transferred to recipients if the necessity to disclose the personal data has been established and there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced. These conditions are cumulative.

As the Court ruled in constant case law, if the applicant does not provide any express and legitimate justification in order to demonstrate the necessity for the personal data to be transferred, the Commission cannot weigh up the interests, and the request must therefore be refused⁵.

In the present case, I note that you have not put forward any arguments to substantiate a need to obtain the above-mentioned personal data, nor any specific interest in obtaining these data. Furthermore, it cannot be assumed that the legitimate interests of the individuals concerned would not be prejudiced by the disclosure.

Therefore, in accordance with Article 4(1)(b) of Regulation 1049/2001, access to the personal data contained in the documents requested has to be refused, as the need for public disclosure has not been substantiated, and it cannot be assumed that the disclosure would not prejudice the legitimate rights of the individuals concerned.

Please note also that Article 4(1)(b) of Regulation 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

In case you would disagree with the above assessment, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to introduce a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

⁴ See *inter alia*, judgment in *Österreichischer Rundfunk*, C-465/00, EU:C:2003:294, paragraph 73.

⁵ Judgments in *Bavarian Lager*, EU:C:2010:378, paragraphs 77-78, *Strack*, C-127/13 P, EU:C:2014:2250, paragraphs 107 -108; and also *Schecke and Eifert*, C-92/09 and C-93/09, EU:C:2010:662, paragraph 85.

European Commission
Secretary-General
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BERL 5/288
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P. Leardini', enclosed within a large, stylized oval loop.

Pascal Leardini

Annexes (11): documents to which partial access is granted