



EUROPEAN COMMISSION  
SECRETARIAT-GENERAL

Directorate G  
Director

Brussels, 11 April 2013  
SG/G4/AM/fb – Ares(2013)

Mr. Pascoe Sabido

**Per e-mail only:**

[ask+request-395-2c8bafec@askthecu.org](mailto:ask+request-395-2c8bafec@askthecu.org)

**Subject: Your application for access to documents – Ref GestDem No 2013-1158**

Dear Mr. Sabido,

I refer to your email dated 27/02/2013 in which you made a request for access to documents which contain the review of expert groups conducted by each Commission DG in response to the European Parliament budget reserve of November 2011; your email was registered on 01/03/2013 under the above-mentioned reference number. I also refer to your email of 19/03/2013 which further specified the scope of your request.

With the exception of one document, your request for access can be granted. The reasons for not disclosing this document are explained below. You will find enclosed a copy of the documents to which access is granted. Please note that these documents cannot be reproduced or disseminated for commercial purposes without prior consent given by the Commission. In case you intend to re-use these documents on a non-commercial basis, e.g. by posting them on the Internet, they should be made public in full and with the accompanying explanations given below. Any selective quotation from these documents would misrepresent the review process.

As a general remark, I should point out that expert groups evolve constantly. Since the above-mentioned review, which was carried out by relevant Commission DGs about one year ago, work on expert groups has continued and important changes were introduced in various respects. In fact, in many cases the above-mentioned documents, submitted to the Secretariat General between the spring and the summer of 2012, do not reflect the current situation of the groups in question, as displayed on the Register of Commission Expert Groups and Other Similar Entities <http://ec.europa.eu/transparency/regexpert/index.cfm>.

I should also underline that in a number of cases the assessment by Commission departments included in the above-mentioned documents was subsequently modified and/or completed as a result of internal discussions between the Secretariat General and the Services concerned. The overall outcome of this work in terms of initiatives taken or envisaged, either to modify the composition of groups or to correct membership on the

Register, is included in the state of play dated 06/09/2012 (also attached), which therefore supersedes partly some of the initial contributions. Written additional contributions from DGs which have contributed to the preparation of the above-mentioned state of play are also attached. In particular, I would like to point out the following:

- In the case of DG ENTR, the assessment initially performed in May 2012 was largely modified, as reflected in an excel sheet prepared by DG ENTR at the end of August 2012;
- The initial contribution submitted by DG ENV in May 2012 was modified in June 2012 in relation to the composition of two specific groups placed under its responsibility, as reflected in an internal note from DG ENV to SG;
- The assessment initially performed by DG CONNECT was partly modified by a subsequent commitment of the Director General in DG CONNECT concerning two specific groups, as reflected in a bilateral correspondence between DG CONNECT and SG;
- Information provided by DG EMPL in May 2012 concerning the publication of documents in relation to the activities of a couple of groups was subsequently modified, as reflected in an additional contribution submitted by DG EMPL to SG.

No access can be granted to one document, which was attached to the contribution by BEPA. This document includes the assessment of the merits of individuals who were considered for membership of the European Group on Ethics in Science and New Technologies. Disclosure of this document is prevented by Article 4(1) (b) of Regulation 1049/2001 as it would undermine the privacy and integrity of the individuals concerned.

The names, functions, qualifications and assessments of the individuals concerned constitute personal data in the meaning of Article 2(a) of Regulation 45/2001 on the protection of personal data<sup>1</sup>. The Court of Justice has confirmed that "*where a request based on Regulation No 1049/2001 seeks to obtain access to documents including personal data, the provisions of Regulation 45/2001 become applicable in their entirety, including Articles 8 and 18 thereof*"<sup>2</sup>. Pursuant to Regulation 45/2001, personal data must be processed fairly and lawfully. Any processing must be necessary and proportionate for a specific purpose.

I consider that, in this case, the necessity of having the abovementioned data disclosed to the public is not demonstrated. Furthermore, pursuant to Article 8(b) of Regulation 45/2001, the Commission can only transmit personal data to a recipient subject to Directive 95/46/EC 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>3</sup>.

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<sup>1</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.

<sup>2</sup> Judgment of 29.6.2010 in Case C-28/08 P, *Bavarian Lager*, paragraph 63

<sup>3</sup> *Bavarian Lager* judgment, paragraph 78

Nothing in your request shows the necessity of having these data transmitted to you. Consequently, the disclosure of the names of natural persons referred to above has to be refused pursuant to Article 4(1)(b) of Regulation 1049/2001.

To the extent that one of the documents requested is not being disclosed, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make 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:

European Commission  
Secretary-General  
Transparency unit SG-B-5  
BERL 5/327  
B-1049 Bruxelles

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Jens Nymand-Christensen

Enclosure:           Your emails of 27/02/2013 and 19/03/2013  
                          Documents requested