



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate C - Transparency, Efficiency & Resources
The Director

Ref. Ares(2019)2673513 - 17/04/2019

Brussels,
SG.C/AF

By registered mail with AR

Mr Peter Teffer
EUobserver
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Belgium

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40cd73e6@asktheeu.org

Subject: Your application for access to documents – GESTDEM 2019/0591

Dear Mr Teffer,

We refer to your e-mail of 31 January 2019 in which you make a request for access to documents, registered on the same day under the above-mentioned reference number. Please accept our apologies for this late reply.

You request access to 'all documents - including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, operational conclusions, lines to take, e-mails, and presentations - related to the Wednesday 23 January 2019 meeting between president Jean-Claude Juncker and Mr Romano Prodi'.

The European Commission has identified the following documents as falling within the scope of your request:

- Invitation for a meeting between the President of the European Commission Jean-Claude Juncker and Romano Prodi of 26 November 2018, reference Ares(2018)6047789, (hereafter 'document 1');
- Reply to the invitation for a meeting of 27 November 2019, reference Ares(2018)6076344, (hereafter 'document 2').
- Letter sent by Romano Prodi to the President of the European Commission Jean-Claude Juncker of 30 January 2019, reference Ares(2019)552721, (hereafter 'document 3').

1. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001

Since some of the documents originate from a third party, the originator has been duly consulted, in accordance with Article 4(4) of Regulation (EC) No 1049/2001. The third party agreed to the disclosure of the documents.

Having examined the documents and considered the opinion of the third party concerned, we hereby inform you that wide partial access is granted to the requested documents, subject only to the redaction of the personal data in accordance with Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001, for the reasons set out below.

1.1. Protection of privacy and the integrity of the individual

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data'.

The applicable legislation in this field is Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (hereafter 'Regulation (EU) 2018/1725').¹

In its judgment in Case C-28/08 P (*Bavarian Lager*)², the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by Regulation (EU) 2018/1725. However, the case law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person [...]'. As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), 'there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life'.³

Please note that the documents, to which you request access, contain the names, surnames, contact details (email addresses, telephone and office numbers) and professional activities of people who are not considered as public figures, such as members of the 'Fondazione per la Collaborazione tra i Popoli' and staff members of the

¹ Official Journal L 205 of 21.11.2018, p. 39.

² Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd*, Case C-28/08 P, EU:C:2010:378, paragraph 59.

³ Judgment of the Court of Justice of 20 May 2003, *Rechnungshof and Others v Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

European Commission not holding any senior management positions. The documents also contain biometric data, which is redacted by default.

The names, surnames and contact details of the persons concerned as well as other data from which their identity can be deduced, undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

Pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725, personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if '[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests'.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, can the transmission of personal data occur.

In Case C-615/13 P (*ClientEarth*), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data.⁴ This is also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the withheld personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no

⁴ Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Food Safety Agency*, C-615/13 P, EU:C:2015:489, paragraph 47.

reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data.

2. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Please note that article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

3. PARTIAL ACCESS

Please note that partial access is granted to the documents.

4. MEANS OF REDRESS

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the European Commission to review this position.

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

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,



Tatjana VERRIER
Director

Enclosures: (3)