



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND
TECHNOLOGY

The Director-General

Brussels,
CONNECT/R4

Mr. Álvaro Merino
Calle Ricardo Ortiz 61, 1B
Madrid
Spain

By email only:

ask+request-6615-e5db0fe3@asktheeu.org

Subject: Your application for access to documents – GestDem 2019/1526

Dear Mr. Merino,

We refer to your access to documents application submitted under Article 2(1) of Regulation 1049/2001 on public access to documents (hereinafter, ‘Regulation 1049/2001’) received on 13/03/2019 and registered on the same date under the above mentioned reference number. We also make reference to our request for clarification of 29/03/2019 (our reference, [Ares\(2019\)2265266](#)) to which you replied on 31/03/2019. We also refer to our holding reply dated 26/04/2019, our reference [Ares\(2019\)2819347](#), whereby we informed you that the time-limit for handling your application was extended by 15 working days pursuant to Article 7(3) of Regulation 1049/2001.

1. SCOPE OF YOUR APPLICATION

By means of your application you requested access to a “...*list of lobby meetings held by the commissioner in charge of Communication Networks, Content and Technology, Mariya Gabriel, the vice-president Andrus Ansip or any other member of its Cabinet with any organisations representing churches and/or religious communities since 2014 onwards, including all emails, minutes, reports or any other briefing papers related to all those meetings.*”

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

We have identified three documents, comprising several attachments as falling within the scope of your application:

- (a) **Document 1:** Email received from the Representation office of the church of Greece to the EU on 08/02/2019 (with three accompanying attachments) ([Ares\(2019\)3193565](#));

- (b) **Document 2:** Exchange of emails (as a follow up to the email in Document 1) between the Commission and the Representation office of the church of Greece to the EU (latest email dated 11/02/2019) ([Ares\(2019\)3193351](#));
- (c) **Document 3:** Steering brief prepared for Commissioner Mariya Gabriel in view of her visit to the Vatican of March 2019 ([Ares\(2019\)3193019](#)).

No documents were found in relation to the part of your request relating to a list of lobby meetings held by Commissioner Gabriel and Vice-President Ansip or any members of their Cabinets with any organisations representing churches and/or religious communities since 2014 onwards.

3. ASSESSMENT UNDER REGULATION 1049/2001

Having examined the documents falling within the scope of your request under the provisions of Regulation 1049/2001, we have arrived at the conclusion that **partial disclosure** can be given for **attachments 2 and 3 of Document 1** and to **Document 3** on the basis of applicable exceptions under Article 4 of Regulation 1049/2001. Disclosure is refused with regard to **Document 1** and **attachment 2 of Document 1** and to **Document 2** in view of applicable exceptions under Article 4 of Regulation 1049/2001.

(i) *Protection of personal data*

The documents for which you have requested access contain personal data, in particular names, functions, contact details and signatures.

Pursuant to Article 4(1)(b) of Regulation 1049/2001, access to a document has to be refused if its 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/EC¹ (hereinafter, ‘Regulation 2018/1725’).

Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data “*means any information relating to an identified or identifiable natural person [...]*”. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.² Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff numbers of an institution are to be considered personal data³.

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

² Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

³ Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, [ECLI:EU:T:2018:560](#).

Pursuant to Article 9(1)(b) of Regulation 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 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established 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. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced.

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 document, 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, we conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned. As to the signatures, which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned. In light of the foregoing, we are disclosing a version of the document requested in which this data has been redacted and marked as personal data.

In light of this exception we are disclosing a version of **attachments 2 and 3 to Document 1** and **Document 3** in which this data has been redacted and marked as personal data. With regard to **Document 3**, further redactions are made in view of other applicable exceptions which will be explained hereunder. Personal data is also contained in **Document 1, attachment 1 to the same document** and **Document 2**. However, disclosure of these documents is being refused entirely also on the basis of other applicable exceptions, as will be explained hereunder.

Please note that **attachments 2 and 3 to Document 1** originate from a third party. They are disclosed for information only and cannot be re-used without the agreement of the originator, who holds a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

Document 3 is a document produced by the Commission. You may reuse the document requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of the document. Please note that the Commission does not assume liability stemming from the reuse.

(ii) *Protection of commercial interests*

Article 4(2), first indent of Regulation 1049/2001 stipulates that “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, [...] unless there is an overriding public interest in disclosure.”

Following an examination of **Document 1** and **attachment 1 to the same document**, we have come to the conclusion that these contains commercially sensitive information of the Representation of the Church of Greece to the European Union which are protected by the aforementioned exception under Article 4(2), first indent of Regulation 1049/2001. Disclosure of this information could seriously affect the commercial interests of the third party involved. We consider that there is a real and non-hypothetical risk that public access to the above-mentioned documents would undermine the commercial interests of the third party concerned.

In accordance with Article 4(6) of Regulation 1049/2001, we have considered whether partial access could be granted for **Document 1** and **attachment 1 to the same document**. However, no meaningful partial access is possible without undermining the interests described above. Disclosure of the document cannot therefore be granted.

The exceptions laid down under Article 4(2) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. Such an interest must, firstly, be a public interest and, secondly outweigh the harm caused by disclosure. We have examined whether there could be an overriding public interest in disclosure but we have not been able to identify such an interest.

(iii) *Protection of international relations*

Article 4(1)(a), third indent of Regulation 1049/2001 stipulates that access to a document shall be refused “...where disclosure would undermine the protection of the public interests as regards international relations”.

According to settled case-law, *"the particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation No 1049/2001, combined with the fact that access must be refused by the institution, under that provision, if disclosure of a document to the public would undermine those interests, confers on the decision which must thus be adopted by the institution a complex and delicate nature which calls for the exercise of particular care. Such a decision therefore requires a margin of appreciation"*.⁴ In this context, the Court of Justice has acknowledged that the institutions enjoy *"a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by [the] exceptions [under Article 4(1)(a)] could undermine the public interest"*⁵.

⁴ Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 36.

⁵ Judgment in *Council v Sophie in 't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63.

Document 3 is a briefing prepared for Commissioner Mariya Gabriel in view of a visit to the Vatican on 27/03/2019. Following an examination of this document we consider that partial access can be given in view of the fact that parts of this briefing are covered by the aforementioned exception under Article 4(1)(a), third indent of Regulation 1049/2001.

More specifically, parts of this briefing contain background information concerning the Church's views on various policy areas, divergences in the positions of the EU and the Church in this regard, background information concerning the relationship of the EU with the Vatican along the years etc. The information included in this briefing was in general meant for internal use as a basis to prepare for the Commissioner's visit to the Vatican. There is a concrete risk that the public disclosure of some parts of this briefing would affect the mutual trust between the EU and the Vatican and thus undermine their relations. As the Court recognised in Case T-301/10 *in't Veld v Commission*, "[...] *establishing and protecting a sphere of mutual trust in the context of international relations is a very delicate exercise*"⁶.

We are therefore disclosing a version of this document with redacted parts marked as protected on the basis of the protection of international relations under Article 4(1)(a), third indent of Regulation 1049/2001.

You may reuse the document requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of the document. Please note that the Commission does not assume liability stemming from the reuse.

4. POSSIBILITY OF CONFIRMATORY APPLICATION

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review the above positions.

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
Secretariat-General
Unit C.1. 'Transparency, Document Management and Access to Documents'
BERL 7/076
1049 Bruxelles

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

Yours sincerely,

(e-Signed)
Roberto Viola

Enclosures: 3

⁶ Judgment in *Sophie in't Veld v Commission*, T-301/10, EU:T:2013:135, paragraph 126.