



EUROPEAN COMMISSION
NEIGHBOURHOOD AND ENLARGEMENT NEGOTIATIONS

The Director-General

Brussels,

By registered letter

Subject: Your application for access to documents – Ref GestDem 2019/2158

Dear Ms Martí,

I refer to your application dated 8 April 2019¹ in which you make a request for access to documents, registered on 8 April 2019 under the above-mentioned reference number.²

You request access to:

‘A complete of list of all meetings held by any member of your team/staff with churches, religious associations or communities, as well as with philosophical and non-confessional organisations, from 1 January 2014 onwards, specifying the status of the organization (church, religious association or community, philosophical association or non-confessional association). All documents, including all emails, minutes, reports or other documents received or drawn up before, during or after the meetings, and any other briefing papers related to these meetings.’

¹ Ref. Ares(2019)2457001

² Ref. Ares(2019)2458054

Ms. Martí Josefina
Calle de Juan Bravo 62
Madrid 28006
Spain

Advance copy by email:
ask+request-6781-93bd8211@asktheeu.org

The following meetings fall within the scope of the description provided in your request:

<u>Commission Staff Member</u>	<u>Organisation / Community</u>	<u>Date</u>
1. Head of Unit Montenegro DG NEAR	Serbian Orthodox Church	14 September 2015, Brussels
2. Head of Unit Kosovo*, North Macedonia DG NEAR	Bektashi Community of North Macedonia (Official Representative)	18 November 2015, Brussels
3. Director General DG NEAR – Christian Danielsson	Archbishop Alain Paul Lebeaupin (Apostolic nuncio to the European Union)	18 October 2016, Brussels
4. Deputy Director General DG NEAR – Katarina Mathernova	Georgian Orthodox Church	9 November 2016, Brussels
5. Deputy Director General DG NEAR – Katarina Mathernova	Georgian Orthodox Church	December 2016, Tbilisi
6. Deputy Director General DG NEAR- Katarina Maternova	Georgian Orthodox Church	23 February 2017, Brussels
7. Director D Western Balkans DG NEAR – Genoveva Ruiz Calavera	Representatives of all religious communities (Kosovo*)	9 March 2017, Lipljan
8. Director General DG NEAR – Christian Danielsson	Serbian Patriarch Irinej	12 October 2017, Belgrade
9. Director General DG NEAR – Christian Danielsson	Director of AJC Transatlantic Institute	24 October 2017, Brussels
10. Head of Unit Western Balkans Regional Cooperation and Programmes DG NEAR	Serbian Catholic Church	14 June 2018, Brussels
11. Head of Unit Montenegro DG NEAR	Serbian Orthodox Church	19 March 2019, Brussels

* This designation is without prejudice to positions on the status, and in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence (Ares (2017)6346879).

<p>12. Director D Western Balkans DG NEAR – Genoveva Ruiz Calavera</p>	<p>Grand Mufti of Bosnia and Herzegovina (Husein Kavazović)</p>	<p>21 March 2019, Sarajevo</p>
<p>13. Deputy Director General DG NEAR – Maciej Popowski</p>	<p>Melkite Greek Catholic Archeparchy of Zahle and Forzol (Archbishop Issam John Darwich)</p>	<p>3 April 2019, Brussels</p>

The following documents were produced from the above-mentioned meetings:

- A. Briefing on meeting 3;
- B. Briefing on meeting 4;
- C. Email exchange in relation to planning of meeting 6;
- D. Email exchange in relation to planning of meeting 6;
- E. Email exchange in relation to meeting 6;
- F. List of participants to meeting 6;
- G. Briefing on meeting 6;
- H. Tweet on meeting 7 by EU Office / EU Special representative in Kosovo;
- I. Report on meeting 10;
- J. Briefing and report on meeting 8;
- K. Briefing on meeting 9;
- L. Meeting request in relation to meeting 11;
- M. Short informal briefing on meeting 11;
- N. Speech by Director D DG NEAR during meeting 12;
- O. Internal Commission press release regarding meeting 13;
- P. Meeting request in relation to meeting 13.

Having examined the documents that you requested under the provisions of Regulation (EC) No 1049/2001³, I have come to the following conclusions:

- Document H is already public and you can access it at: <https://twitter.com/eukosovo/status/839819452564795393?lang=en>
- Documents N and O can be fully disclosed;
- Documents C, D, E, F, L and P can be disclosed subject to redaction of personal data based on Article 4(1)(b) (protection of the privacy and integrity of the individual), redaction of data whose disclosure could undermine the public interest as regards international relations based on Article 4(1)(a) third indent (international relations), and Article 4(6) (partial access) of the Regulation;
- Access must be fully refused to documents A, B, G, I, J, K and M based on Article 4(1)(a), third indent (protection of international relations) of the Regulation. Unlike the documents mentioned previously, no meaningful partial access is possible herein without undermining the interests in question.

The justifications are as follows.

1. Protection of the public interest as regards international relations

³ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, Official Journal L 145 of 31 May 2001, p. 43.

Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001 provides that the ‘institutions shall refuse access to a document where disclosure would undermine the protection of [...] the public interest as regards [...] international relations [...]’.

As per settled case-law, disclosure of European Union positions in international negotiations can damage the protection of the public interest as regards international relations.⁴ The above-mentioned exception can be invoked if the disclosure might entail negative repercussions for the European Union’s relations with third countries.⁵

Furthermore, the Court of Justice stressed in the *In ‘t Veld* ruling that the institutions ‘must be recognised as enjoying a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by [the exceptions provided for in Article 4(1)(a) of Regulation 1049/2001] could undermine the public interest’.⁶

Consequently, ‘the Court’s review of the legality of the institutions’ decisions refusing access to documents on the basis of the mandatory exception [...] relating to the public interest must be limited to verifying whether the procedural rules and the duty to state reasons have been complied with, the facts have been accurately stated, and whether there has been a manifest error of assessment of the facts or a misuse of powers’.⁷

The documents identified under the scope of your request have been examined in light of the above-mentioned case-law. These documents concern matters of international negotiations between the European Union and partner, EU candidate, or potential EU candidate countries on a broad range of topics, such as enlargement process, security and economics.

In particular, documents A, B, G, I, J, K and M contain ‘briefing’ notes and reports reflecting preliminary views of Commission staff members regarding these matters. They also contain sensitive comments regarding the current state of play in the relevant countries.

Public access to the documents concerned would reveal, even indirectly, the Union’s opinions on ongoing discussion topics with the relevant countries. This would, in turn, undermine the position of the European Union in the context of negotiations and discussions with these countries, which are not finalised.

Furthermore, the disclosure of the above-referred information would negatively affect the relations with the countries in question, as it would undermine the climate of mutual trust in the context of ongoing discussions and negotiations, which is necessary to ensure the smooth implementation of the provisions of the different agreements signed with them.

Against this background, there is a risk that disclosure of the documents would have an adverse impact on ongoing negotiation procedures and would compromise the position of the European Union in these discussions. I consider this risk as reasonably foreseeable and non-hypothetical, given the sensitivity of the issue and the relevance of the above-referred information in the ongoing negotiations.

⁴ Judgment of 19 March 2013, *In ‘t Veld v European Commission*, T-301/10, paragraph 123.

⁵ Judgment of 7 February 2002, *Aldo Kuijer v Council of the European Union*, T-211/00, paragraph 65.

⁶ Judgment of 3 July 2014, *Council v In ‘t Veld*, C-350/12, paragraph 63.

⁷ Judgment of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, paragraph 40.

Consequently, I must conclude that the documents are protected against public disclosure pursuant to the exception provided for in Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

2. Protection of the privacy and the integrity of the individual

Pursuant to Article 4(1)(b) of Regulation (EC) No 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 European Union 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/EC⁸ ('Regulation 2018/1725').

The documents to which you request access contain personal data, in particular names and surnames, and email addresses.

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.⁹

In this respect, names, signatures, functions, telephone numbers and/or initials pertaining to staff members of the Commission below the level of Director are to be considered personal data.¹⁰ By analogy, and to the extent that concerns your request, names of persons who are not public figures, such as lower church officials, are also to be considered personal data.

In its judgment in Case C-28/08 P (*Bavarian Lager*)¹¹, 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.¹²

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

⁸ Official Journal L 205 of 21.11.2018, p. 39.

⁹ 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.

¹⁰ 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.

¹¹ Judgment of 29 June 2010 in Case C 28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59.

¹² Whereas this judgment specifically related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

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 documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy.

Consequently, I 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.

3. 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 Commission to review its 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-C-1
BERL 7/076
B-1049 Bruxelles/Brussel

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

Yours sincerely,

[e-signed]
Christian Danielsson