



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

The Director-General

 Ref. Ares(2019)4262298 - 04/07/2019

Brussels,  
SANTE.DDG2.D.1/AVA (2019)4109630

Mute SCHIMPF  
Friends of the Earth Europe  
Rue d'Edimbourg 26 1050 Brussels  
Belgium

*By registered letter with  
acknowledgment of receipt*

*Advance copy by email:*  
[ask+request-6924-  
8095da27@asktheeu.org](mailto:ask+request-6924-8095da27@asktheeu.org)

Dear Ms Schimpf,

**Subject: Your application for access to documents – Ref GestDem 2019/3008**

We refer to your email dated 22 May 2019 in which you make a request for access to documents, registered on the same date under the above-mentioned reference number.

We refer also to our email of 13 June 2019 (Ref. Ares(2019)3791784) extending the time limit for responding to your request, pursuant to Article 7(3) of Regulation (EC) No 1049/2001.

**1. Scope of your request**

On the basis of Regulation (EC) No 1049/2001<sup>1</sup>, you requested access to:

‘The recording of agenda item 7. Short information on points raised by stakeholders: What is next after CJEU ruling on mutagenesis during the Plenary meeting of the Advisory Group on the Food Chain and Animal and Plant Health held on 26 November 2018’.

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<sup>1</sup> Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

## **2. Identification and assessment of the relevant documents**

Your request concerns the audio recording of item 7 on the agenda of Plenary meeting of the Advisory Group on the Food Chain and Animal and Plant Health which took place on 26 November 2018, namely the following item: “Short information on points raised by stakeholders : What is next after CJEU ruling on mutagenesis?”

You also stated that you are solely interested in the Commission’s interventions on this point and not in the contributions from other stakeholders present at the meeting.

Having examined this recording under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we have come to the conclusion that the recording cannot be disclosed as its disclosure is prevented by one of the exceptions to the right of access laid down in Article 4 of Regulation (EC) No 1049/2001.

## **3. Reason for non-disclosure**

*Protection of the privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data - Article 4(1)(b) of Regulation (EC) No 1049/2001*

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 EU legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EU) 2018/1725<sup>2</sup>.

Non-confidential parts of the recording to which you have requested access contain personal biometric data, more specifically voices of Commission staff and participants attending this meeting.

Indeed, Article 3(1) of Regulation (EU) 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.<sup>3</sup>

In its judgment in Case C-28/08 P (*Bavarian Lager*)<sup>4</sup>, 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<sup>5</sup>.

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<sup>2</sup> 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

<sup>3</sup> 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, ECLI:EU:C:2017:994, paragraphs 33 to 35.

<sup>4</sup> 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.

<sup>5</sup> 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.

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.

According to Article 9(1)(b) of Regulation (EU) 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.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned.

Consequently, we conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the recording, 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.

#### **4. Partial access**

In your application, you specify that your request only concerns the Commission’s intervention on item 7 of the agenda: “What is next after CJEU ruling on mutagenesis?” and excludes the interventions of other participants to the meeting.

In order to be able to provide you with the requested part of the recording and to ensure the protection of the privacy and the integrity of the person who speaks on behalf of the Commission, it would be necessary to use different tools in order to extract the requested part of the recording and to distort the voice of the speaker. Such manipulations cannot be considered as standard operations to be performed by Commission services.

## 5. Means of redress

In case you would disagree with this assessment, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit 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, Document Management & Access to Documents (SG.C.1)  
BERL 7/076  
B-1049 Brussels  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Anne BUCHER