



Brussels, 23.10.2019
SG.C/AF/rc -

**By registered letter with acknowledgment
of receipt**

Peter Teffer
Ekko Voorkamer
Bemuurde Weerd WZ 3 3513 BH Utrecht
The Netherlands

Advance copy by email:
ask+request-7030-644ae043@asktheeu.org

Subject: Your application for access to documents – Ref GestDem No 2019/3777

Dear Sir,

We refer to your e-mail of 1 July 2019 in which you make a request for access to documents, registered on 2 July 2019 under the above-mentioned reference number.

Please accept our apologies for this late reply which is due to the time required to perform an individual assessment of the documents concerned by your request and the inter-service consultations which took place in relation to it.

1. SCOPE OF YOUR REQUEST

You requested access to, I quote, ‘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 all meetings secretary-general Martin Selmayr has held with organisations or self-employed individuals since 1 March 2018’.

After a research was conducted in the European Commission’s corporate document management systems, it became clear that your request concerned a very large amount of documents. Therefore, the European Commission engaged in a discussion with you and sent you an email on 19 July 2019, by which it informed you that your application concerned a large number of documents, which will need to be assessed individually and that such a detailed analysis cannot be carried out within the normal time limits set out in Regulation (EC) No 1049/2001.

It this email, the European Commission provided you with a list of briefings prepared in relation to the meetings held between the Secretary-General Martin Selmayr and different entities. The European Commission identified these documents following a search conducted in the corporate document management systems, and informed you that the total number of pages of the documents concerned by your request amounted to more than 360.

The European Commission suggested that you limit the scope of your request to cover documents in relation to meetings with a maximum four of the lobby entities enumerated in the list, of your choice, in order to enable the European Commission to handle your application within the prescribed time limit.

By a first email of 24 July 2019, you agreed with the principle of reducing the scope of your request, but disagreed with the number of entities concerned. You agreed to restrict the request to documents in relation to meetings held with seven entities.

By email of 25 July 2019, the European Commission replied to you that unfortunately the amount of pages covered by the new scope of the request is still too important to be handled within the prescribed deadline, namely amounting to 150 pages and informed you that a maximum of 60 pages could possibly be handled within the remaining time period.

By email of 25 July 2019, you agreed to limit the scope of your request to the following documents:

- Briefing for the meeting with Bundesverband der Deutschen Industrie e.V. (BDI), 6 November 2018, reference Ares(2019)5917934 (hereafter 'document 1');
- Briefing for the meeting of 20 December 2018, reference Ares(2019)5918131 (hereafter 'document 2');
- Briefing for the meeting with Airbus, 18 December 2018, reference Ares(2019)5918031 (hereafter 'document 3');
- Briefing for follow-up meeting on the event organised by Bundesverband der Deutschen Industrie, 25 January 2019, reference Ares(2019)5918224 (hereafter 'document 4').

In addition to the above-mentioned briefings, we are pleased to inform you that three more documents falling within the scope of your application were identified in the course of the handling of your application, namely:

- Report of the conference 'Save the Single market' of 6 November 2018, reference Ares(2019)5917199 (hereafter 'document 5');
- Readout of the meeting held with Airbus of 18 December 2018, reference Ares(2019)5917296 (hereafter 'document 6');
- Report of the meeting between the Secretary-General and German business associations on the topic of standardisation of 25 January 2019, reference Ares(2019)5917521 (hereafter 'document 7').

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

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have concluded that they may be partially disclosed. Some parts of the documents have been blanked out as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

2.1. Protection of personal data

The documents contain the personal data of third parties who are not considered as public figures and of staff members of the European Commission not holding any senior management positions.

Disclosure of the personal data is prevented by Article 4(1)(b) of Regulation (EC) No 1049/200, which 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.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.

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person [...]'.³

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

The names, surnames, contact details and professional activities of people 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.

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.

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. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subjects' 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 and subject them to unsolicited external contacts.

Consequently, in accordance with 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 are reasons to believe that the legitimate interests of the individuals concerned would be prejudiced by disclosure of the personal data.

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.

2.2. Protection of the commercial interests

Article 4(2), first indent of Regulation (EC) No 1049/2001 provides 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'.

The redacted parts of documents 1, 2, 3, 6 contain commercially sensitive information, such as information containing details on the turnover, number of staff, data on export and import turnovers of entities which participated in the meetings. Furthermore, they contain internal views and positions of the entities in question, which might reveal their commercial strategies to the public.

Consequently, I conclude that there is a real and non-hypothetical risk that public access to the above-mentioned information would undermine the commercial interests of entities in question. I conclude, therefore, that access to the withheld parts of the requested documents must be denied on the basis of the exception laid down in the first indent of Article 4(2) of Regulation (EC) No 1049/2001.

2.3. Protection of the decision-making process

Article 4(3) first subparagraph of Regulation (EC) No 1049/2001 provides that '[a]ccess to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure'.

Article 4(3) second subparagraph of Regulation (EC) No 1049/2001 provides that '[a]ccess to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.'

The redacted parts of documents 1, 2, 3, 4, 5, 6 contain the views of staff members of the European Commission on specific past and future acts and initiatives of the European Commission. These views, expressed in the briefings documents in particular, intend to give all the necessary information to senior management in order to, among other things, prepare exchanges with external stakeholders. Please note that briefings are internal documents, which allow European Commission staff at expert level to provide information at their disposal, including information received in confidence from third parties and sensitive data, and to express their views and give advice to their managers free from external pressure. This information in turn, would allow the senior management to adopt the best course of action in order to serve the objectives of the European Commission. The redacted parts of the information contained in the other type of documents requested (documents 5 and 6) reflect these internal views expressed in the briefings.

Please note that full disclosure of the documents would therefore undermine the decision-making process, as it would reveal internal views on specific acts and initiatives of the European Commission. Revealing this information would subject the latter to unnecessary external pressure.

Consequently, I conclude that access to some parts of requested documents must also be refused based on Article 4(3), first and second paragraphs, of Regulation (EC) No 1049/2001.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions laid down in Article 4(2) and 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents.

In your application, you do not put forward any specific arguments to establish the existence of an overriding public interest.

I have not been able neither, based on my own analysis, to establish the existence of an overriding public interest that would outweigh the interests protected by the exceptions laid down in Article 4(2) and 4(3) of Regulation (EC) No 1049/2001.

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

4. PARTIAL ACCESS

Please note that partial access is granted to the documents.

5. 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 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
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 sincerely,



Tatjana VERRIER

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