



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate D - Jobs, Growth & Investment
The Director

Brussels,
SG.D.3/RG

Mr Olivier Hoedeman
Corporate Europe Observatory(CEO)
Rue d'Edimbourg 26
1050 Brussels

By email only: ask+request-
75092ef07215@asktheeu.org

**Subject: Your application for access to documents
Ref GestDem No 2019/7295**

Dear Mr Hoedeman,

I refer to your request for public access to documents of 13 December 2019, registered on 17 December 2019, under the above-mentioned reference number.

1. Scope of your request

Your request under Regulation 1049/2001 concerns

“all reports (and other notes) from meetings between the European Commission and representatives of the tobacco industry (producers, distributors, importers etc, as well as organisations and individuals that are funded by and/or work to further the interests of the tobacco industry), during 2019.

- all correspondence (including emails) between the European Commission and representatives of the tobacco industry (producers, distributors, importers etc. as well as organisations and individuals that are funded by and/or work to further the interests of the tobacco industry), during 2019

- a list of all the above-mentioned documents (including dates, names of participants/senders/recipients and their affiliation, subject of meeting/correspondence)”.

As you have been informed by the Commission, your request has been split among a number of Commission services. This reply concerns only documents falling under the responsibility of the Secretariat-General. The requests concerning other services were registered under separate numbers and will be handled by those services in due course.

2. Identification and assessment of the concerned documents

We have identified two documents falling into the scope of your request, with references Ares(2019)6936539 and Ares(2019)7429620. These are two messages dated 6 November 2019 and 2 December 2019 sent by British American Tobacco to the Secretariat-General. I have the pleasure to inform you that a wide partial access can be granted to these two documents. You will find the expunged versions enclosed with this reply.

3. Protection of personal data

The documents to which you have requested access contain personal data, in particular names.

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 Community legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EC) No 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 ('Regulation 2018/1725').

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

In its judgment in Case C-28/08 P (*Bavarian Lager*)³, 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.⁴

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

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 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, [EU:C:2010:378](#), paragraph 59.

⁴ 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 personal 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 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.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation 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 handwritten parts and signatures, which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned.

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 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

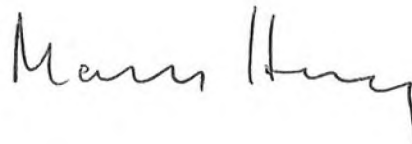
Transparency, Document Management & Access to Documents (SG.C.1)

BERL 7/076

B-1049 Bruxelles

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

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Marcel Haag', with a stylized, cursive script.

Marcel Haag