



EUROPEAN COMMISSION

Secretariat-General

Directorate C – Transparency, Efficiency & Resources

The Director

Brussels
SG.C.1/TB/

By registered mail with AR

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Subject: Your application for access to documents – GESTDEM 2020/3887

Dear Mr Teffer,

I refer to your e-mail of 26 June 2020, registered on the same day, in which you make a request for access to documents, under the above-mentioned reference number. Please accept our apologies for the late reply to your request.

1. SCOPE OF YOUR REQUEST

You request access to, I quote:

‘All documents – including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, operational conclusions, lines to take, briefings, e-mails, and presentations – related to the following video conference meetings President Von der Leyen has held with organisations and self-employed individuals:

- 11/05/2020 Videoconference with the President and General-Secretary of ETUC
- 15/05/2020 Meeting with the President and Director-General BusinessEurope
- 24/05/2020 Videoconference with CEO Global Citizen
- 12/06/2020 Videoconference CEO of Amgen and CEO of Teneo’.

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

The Secretariat-General of the European Commission has identified the following documents as falling under the scope of your request:

- Business Europe meeting, dated 15 May 2020, reference Ares(2020)4806242 (hereafter ‘document 1’);
- ETUC meeting, dated 11 May 2020, reference Ares(2020)4806195 (hereafter ‘document 2’);
- Global Citizen meeting, dated 24 May 2020, reference Ares(2020)5071557 (hereafter ‘document 3’); and
- Amgen and Teneo meeting, dated 12 June 2020, reference Ares(2020)5072370 (hereafter ‘document 4’, documents 1 to 4 hereafter the ‘requested documents’).

I can inform you that wide partial access is granted to the requested documents subject only to redactions due to the protection of the privacy and the integrity of the individual as per point (b) of Article 4(1) of Regulation (EC) No 1049/2001, for the reasons set out below.

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

Article 4(1)(b) of Regulation (EC) No 1049/2001 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’.

In its judgment in Case C-28/08 P (*Bavarian Lager*)¹, the Court of Justice ruled that when a request is made for access to documents containing personal data, 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 data² (hereafter ‘Regulation (EC) No 45/2001’) becomes fully applicable.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by 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/EC³ (hereafter ‘Regulation (EU) 2018/1725’).

¹ Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd* (hereafter referred to as ‘*European Commission v The Bavarian Lager* judgment’) C-28/08 P, EU:C:2010:378, paragraph 59.

² OJ L 8, 12.1.2001, p. 1.

³ OJ L 295, 21.11.2018, p. 39.

However, the case law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

In the above-mentioned judgment, the Court stated that Article 4(1)(b) of Regulation (EC) No 1049/2001 ‘requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, and in particular with [...] [the Data Protection] Regulation’.⁴

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

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’.⁵

The requested documents contain personal data such as the names and positions of persons who do not form part of the senior management of the European Commission.

The names⁶ of the persons concerned 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.

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.⁷ 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

⁴ *European Commission v The Bavarian Lager* judgment, cited above, paragraph 59.

⁵ 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.

⁶ *European Commission v The Bavarian Lager* judgment, cited above, paragraph 68.

⁷ 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.

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 for access to documents, 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, there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by the 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, 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 the disclosure of the personal data concerned.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

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

4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, I have considered the possibility of granting (further) partial access to the documents requested.

However, for the reasons explained above, no wider partial access is possible without undermining the interests described above.

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 Secretariat-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
B-1049 Brussels,

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

Yours faithfully,

Tatjana Verrier
Director

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