



EUROPEAN COMMISSION

LEGAL SERVICE
The Director-General

Brussels, 3 February 2021

By e-mail

Mr Nicholas Haagensen
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Subject: Request for access to documents

Ref.: Your request of 17 December 2020, registered on 23 December 2020, under reference GestDem2020/7954

Dear Mr Haagensen,

I refer to your request for access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹. Your request concerns “*the legal submissions/observations of the parties and interveners in the Joined Cases C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P.*”²

In accordance with the *fair solution* proposal³ agreed upon by email of 23 December 2020, the Legal Service has registered your request for access to the written submissions made by:

- all the parties in Case C-597/18 P *Council v. Chrysostomides & Co. and others*;
- the Council (*Cross Appeal*), Chrysostomides’ (*Appeal and Response to Cross Appeal*) and the Commission (*Response*) in Case C-603/18 P *K. Chrysostomides & Co. and Others v Council*.

Please be informed that Cases C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P were joined for the purposes of the oral part of the procedure and the judgment.

1. IDENTIFICATION OF THE DOCUMENTS

After examination of the Legal Service’s files, the written submissions of the following parties have been identified as matching the terms of your request:

¹ Official Journal L 145, 31.05.2001, page 43.

² Judgment of the Court of Justice of 16 December 2020, Joined Cases C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, *Council e.a. v. Dr. K. Chrysostomides & Co. e.a.* ECLI:EU:C:2020:1028.

³ Reference: Ares(2020)7876272.

Case C-597/18 P - Council v K. Chrysostomides & Co. and Others

1. Council of the European Union - Appeal;
2. European Commission - Response;
3. Berry Investments Inc. - Application to intervene;
4. Georgios and Maria Theodorakis - Application to intervene;
5. Georgios Legakis a.o. - Application to intervene;
6. Dr. K. Chrysostomides & Co. LLC - Response to the Appeal;
7. Amira Maria - Application to intervene;
8. European Commission - Observations on application to intervene by Berry Investments Inc.
9. European Commission - Observations on application to intervene by Georgios and Maria Theodorakis;
10. European Commission - Observations on application to intervene by Georgios Legakis a.o.;
11. European Commission - Observations on application to intervene by Amira Maria;
12. Government of Finland - Statement in intervention;
13. Dr. K. Chrysostomides & Co. LLC - Reply to the Statement in intervention by Finland;

Case C-603/18 P - K. Chrysostomides & Co. and Others v Council

14. Council of the European Union - Cross Appeal;
15. European Commission - Response;
16. Dr. K. Chrysostomides & Co. LLC - Appeal;
17. Dr. K. Chrysostomides & Co. LLC - Response to cross Appeal.

2. WRITTEN SUBMISSIONS BY THE EUROPEAN COMMISSION (DOCUMENTS 2, 8 TO 11 AND 15)

After a concrete assessment of the Commission's written submissions, I am pleased to inform you that they can be disclosed, under Regulation (EC) No 1049/2001, with the exception of some personal data as will be explained in point 5 below. Accordingly, please find attached the redacted original versions of documents 2, 8 to 11 and 15 in English, the language of the proceedings.

You may reuse the disclosed documents free of charge provided that the source is acknowledged and that you do not distort their original meaning or message. Please note that the Commission does not assume liability stemming from the reuse.

3. WRITTEN SUBMISSIONS BY THE OTHER PARTIES (DOCUMENTS 1, 3 TO 7, 12 TO 14, 16 AND 17)

As far as the written submissions of the other parties are concerned, the Commission has consulted the authors of the respective documents on their disclosure, in accordance with Article 4(4) of Regulation (EC) No 1049/2001.

Following these consultations, I would like to inform you that:

- the Council of the European Union, Amira Maria and the Government of Finland (documents 1, 7, 12 and 14) have agreed to the disclosure of their written submissions ;

Please note however that some personal data mentioned in these documents has been redacted, as will be explained in point 5 below.

- Christianos & Partners Law Firm, on behalf of Berry Investments Inc., Mr and Mrs Theodorakis and Mr and Mrs Legakis (documents 3, 4 and 5) have refused to grant access to their written submissions considering that they are covered by the exception provided for in Article 4(2), second indent, of Regulation (EC) No 1049/2001 (*“protection of legal advice”*), as will be explained in point 6.1 below;
- Mr Takis Panagiotis Tridimas, Barrister, on behalf of Dr. K. Chrysostomides & Co. LLC. (documents 6, 13, 16 and 17) has refused to grant access to their written submissions, considering that they are covered by the exception provided for in Article 4(2), second indent, of Regulation (EC) No 1049/2001 (*“protection of court proceedings and legal advice”*), as will be explained in point 6.1 and 6.2 below.

4. DISCLOSURE OF THE WRITTEN SUBMISSIONS BY THE COUNCIL OF THE EUROPEAN UNION, AMIRA MARIA AND THE GOVERNMENT OF FINLAND

As stated above, the Council of the European Union, Amira Maria and the Government of Finland (documents 1, 7, 12 and 14) have agreed to the disclosure of their written submissions.

Accordingly, please find enclosed the redacted original versions of documents 1, 7 and 14 in English as well as the English translation⁴ of document 12, made by the services of the Court of Justice.

Please note that the disclosed documents were transmitted by the Court of Justice to the Commission in its capacity as participant in the court proceedings. Access to them is granted for information only and they cannot be re-used without the agreement of the originators, who may hold the copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

5. REFUSAL OF PERSONAL DATA

As stated above, some personal data has been redacted in documents 1, 2, 7 to 11, 14 and 15 since covered by the exception provided for in Article 4(1)(b) of Regulation (EC) No 1049/2001, (*“protection of personal data”*)⁵, in accordance with the European Union legislation regarding the protection of personal data. This information is the following:

- the initials of the Commission’s officials (first page of documents 2, 8 to 11 and 15);
- the handwritten signatures of the Council’s agents (last page of documents 1 and 14);
- the phone number of the lawyer as well as the names and addresses of the parties listed in the Application for leave to intervene by Amira Maria (first page of document 7).

The applicable legislation in this field is Regulation (EU) 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/EC⁶ (‘Regulation (EU) No 2018/1725’).

⁴ The original language of this document is Finnish.

⁵ *"The institutions shall refuse access to a document where disclosure would undermine the protection of: [...] (b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data"*.

⁶ OJ L 205 of 21.11.2018, page 39.

Article 3(1) of Regulation (EU) No 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.⁷

In its judgment in Case C-28/08P (Bavarian Lager)⁸, 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.⁹ Furthermore, in its judgment in Joined Cases C-465/00, C-138/01 and C-139/01 the Court has recognized that “*there is no reason of principle to justify excluding activities of a professional nature [...] from the notion of private life*”.¹⁰

On this basis, the telephone number of the lawyer as well as the names and addresses of the parties listed in the Application for leave to intervene by Amira Maria (document 7) have been deleted, since they constitute personal data in the meaning of Article 3(1) of Regulation (EU) No 2018/1725.

With regard to the personal data such as names, signatures, functions, telephone numbers and other information relating to the institution's officials, the General Court has recognised in its judgment in Case T-39/17 that they fall within the notion of “*private life*” regardless of whether this data is registered in the context of a professional activity¹¹ and, therefore, it constitutes personal data in the meaning of Article 3(1) of Regulation (EU) No 2018/1725.

As regards the personal data of the officials of the institutions, the General Court has confirmed in its judgment in Case T-39/17 that the information such as names, signatures, functions, telephone numbers and other information pertaining to staff members of an institution fall within the notion of “*private life*”, regardless of whether this data is registered in the context of a professional activity or not. Therefore, the initials of the Commission’s officials (documents 2, 8 to 11 and 15) and the handwritten signatures of the Council’s agents (documents 1 and 14) have been redacted, since this information also constitutes personal data within the meaning of Article 3(1) of Regulation (EU) No 2018/1725.¹²

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*”.

⁷ Judgment of the Court of Justice of 20 December 2017, Case C-434/16, *Peter Nowak v Data Protection Commissioner*, ECLI:EU:C:2017:994, paragraphs 33-35.

⁸ Judgment of the Court of Justice of 29 June 2010, Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, ECLI:EU:C:2010:378, paragraph 59.

⁹ *Bavarian Lager* judgment, paragraph 63. 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 (EU) 2018/1725.

¹⁰ Judgment of the Court of Justice of 20 May 2003, Joined Cases C-465/00, C-138/01 and C-139/01, *Rechnungshof and Others v Österreichischer Rundfunk*, ECLI:EU:C:2003:294, paragraph 73.

¹¹ Judgment of the General Court of 19 September 2018, Case T-39/17, *Chambre de commerce et d’industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission*, ECLI:EU:T:2018:560, paragraphs 37, 38 and 43.

¹² Judgment of General Court of 19 September 2018, Case T-39/17, *Chambre de commerce and d’industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission*, ECLI:EU:T:2018:560, paragraphs 37, 38 and 43.

Only if these conditions are met and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EU) No 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation (EU) No 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 subject 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, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the above-mentioned 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.

Please note that the exception of Article 4(1)(b) has an absolute character and does not envisage the possibility of demonstrating the existence of an overriding public interest.

6. REFUSAL OF THE WRITTEN SUBMISSIONS BY CHRISTIANOS & PARTNERS LAW FIRM, ON BEHALF OF BERRY INVESTMENTS INC., MR AND MRS THEODORAKIS AND MR AND MRS LEGAKIS AS WELL AS THE WRITTEN SUBMISSIONS BY MR TAKIS PANAGIOTIS TRIDIMAS, BARRISTER, ON BEHALF OF DR. K. CHRYSOSTOMIDES & CO. LLC.

6.1 Protection of legal advice

As indicated above, Christianos & Partners Law Firm as well as Mr Takis Panagiotis Tridimas, Barrister (documents 3, 4, 5, 6, 13, 16 and 17) informed the Commission that they oppose the disclosure of their written submissions for considering that they are covered by the exception provided for in Article 4(2), second indent, of Regulation (EC) No 1049/2001 ("*protection of legal advice*").¹³

In this respect, they argue that the submissions are covered by legal professional privilege. Therefore, the relationship between the attorney and the client, which was established in Cases C-597/18 P and C-603/18 P, implies that legal advice was given in complete confidentiality, which should not be undermined even at this stage of the procedure.

¹³ "[T]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] court proceedings [...] unless there is an overriding public interest in disclosure".

Moreover, these written submissions made to the Court of Justice were based on the grounds of respect of confidentiality, which would be undermined in case of disclosure, given that they are the product of legal advice.

6.2 Protection of court proceedings

As indicated above, Mr Takis Panagiotis Tridimas, Barrister, (documents 6, 13, 16 and 17) informed the Commission that he opposes to the disclosure of his written submissions for considering that they are covered by the exception provided for in Article 4(2), second indent, of Regulation (EC) No 1049/2001 ("*protection of court proceedings*")¹⁴.

The purpose of the exception for the protection of court proceedings is to maintain the independence of the European Union's institutions in their dealings with the courts, to protect the integrity of court proceedings and to ensure the proper course of justice.

In this sense, the Court of Justice has recognised in its judgment in Joined Cases C-514/07P, C-528/07P and C-532/07P, that disclosure of pleadings lodged before the Court of Justice in pending court proceedings is presumed to undermine the protection of these proceedings¹⁵. The Court has furthermore stated that with the closure of the proceedings there are no longer grounds to presume that disclosure of the pleadings would undermine the judicial activities of the Court. However, the Court has admitted the possibility that disclosure of pleadings relating to court proceedings, which are closed but connected to other proceedings which remain pending, may create a risk that the later proceedings might be undermined¹⁶.

In this respect, Mr Takis Panagiotis Tridimas, Barrister argues that, although the proceedings in Cases C-597/18 P and C-603/18 P have been closed by the judgment of the Court of Justice, there is a strong possibility that they may be continued before the European Court of Human Rights and/or the domestic courts of Cyprus. Therefore, the disclosure of the written submissions may have a direct consequence on these proceedings and thus would undermine the protection of them.

In the light of the above, the Commission is unable to grant access to the written submissions by Christianos & Partners Law Firm, on behalf of Berry Investments Inc., Mr and Mrs Theodorakis and Mr and Mrs Legakis as well as by Mr Takis Panagiotis Tridimas, Barrister, on behalf of Dr. K. Chrysostomides & Co. LLC.

6.3 Possibility of granting partial access

As laid down in Article 4(6) of Regulation (EC) No 1049/2001, I have considered the possibility of granting partial access to the requested document. However, after careful examination, I have come to the conclusion that it is entirely covered by the invoked exceptions so that a partial disclosure cannot be granted without harming the protected interests.

7. **OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

Pursuant to Article 4(2) of Regulation (EC) No 1049/2001, the exception to the right of access must be waived if there is an overriding public interest in disclosing the requested document(s). In order for an overriding public interest in disclosure to exist, this interest, firstly, has to be public and, secondly, overriding, i.e. in this case it must outweigh the interest protected under

¹⁴ "[T]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] court proceedings [...] unless there is an overriding public interest in disclosure".

¹⁵ Judgment of the Court of Justice of 21 September, Joined Cases C-514/07P, C-528/07P and C-532/07P, *Sweden and others v API and Commission*, ECLI:EU:C:2010:541, paragraph 94.

¹⁶ *Ibid*, paragraphs 130, 131 and 132.

Article 4(2) second indent. In the present case, I see no elements capable of showing the existence of an overriding public interest in the disclosure of written submissions by the parties mentioned in point 6 that would outweigh the public interest in the protection of the court proceedings and legal advice.

8. MEANS OF REDRESS

Should you wish the position regarding the non-disclosure as well as the refusal of personal data to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretariat-General at the address below:

European Commission
Secretariat-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

Yours sincerely,

[signed electronically]
Daniel CALLEJA CRESPO

Attachments: 10