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**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE  
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under  
Regulation (EC) No 1049/2001 - GESTDEM 2019/4820**

Dear [REDACTED],

I refer to your letter of 18 September 2019, registered on the following day, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>2</sup> (hereafter 'Regulation (EC) No 1049/2001').

**1. SCOPE OF YOUR REQUEST**

In your initial application of 14 August 2019, addressed to the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, you requested access to '[...] preparatory documents in relation to Directive 2001/27/EC'.

In its initial reply of 16 September 2019, the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs informed you that it held the following documents corresponding to your application:

- Summary record of the 63<sup>rd</sup> meeting of the Motor Vehicle Committee, held in Brussels, on 13 October 2000, reference Ares(2019)5877663 (hereafter 'document 1');

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<sup>1</sup> OJ L 345 29.12.2001, p. 94.

<sup>2</sup> OJ L 145 31.5.2001, p. 43.

- Summary record of the 64<sup>rd</sup> meeting of the Motor Vehicle Committee, held in Brussels, on 17 November 2000, reference Ares(2019)5877730 (hereafter 'document 2');

The Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs refused access to documents 1-2, based on the exception in Article 4(3), second subparagraph, of Regulation (EC) No 1049/2001 (protection of Institution's decision-making process) and the confidentiality provisions of the Standard Rules of procedure for Committees, adopted by the European Commission pursuant to Article 9 of Regulation (EU) No 182/2011<sup>3</sup>.

You asked for the review of that position by submitting the confirmatory application on 18 September 2019. In that application you contest the completeness of the list of documents identified by the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs. Indeed, you argue that '[i]t seems strange that the only documents produced in the run up to Directive 2001/27/EC were the summary records of the Motor Vehicles Committee for October and November 2000'. You also question the applicability of the exception in Article 4(3) of Regulation (EC) No 1049/2001 to two documents identified by the above-mentioned Directorate-General.

Following your confirmatory application, the European Commission identified the following, additional documents as falling under the scope of your initial application:

- Adoption '*fiche*' relating to Directive of the European Commission adapting to technical progress Directive 88/77/EEC relating to measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the emission of gaseous pollutants from positive-ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles, reference: PE(2001)415 (hereafter 'document 3');
- Intermediate version (version '0') of Directive of the European Commission adapting to technical progress Directive 88/77/EEC relating to measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the emission of gaseous pollutants from positive-ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles, reference ENTR/F/5-6316-2000 REV0 (hereafter 'document 4');
- Intermediate version (version '1') of Directive of the European Commission adapting to technical progress Directive 88/77/EEC relating to measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the

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<sup>3</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, OJ L 55 of 28.2.2011, p. 13–18.

emission of gaseous pollutants from positive-ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles, reference ENTR/F/5-6316-2000 REV1 (hereafter 'document 5');

- Intermediate version (version '2') of Directive of the European Commission adapting to technical progress Directive 88/77/EEC relating to measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the emission of gaseous pollutants from positive-ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles, reference ENTR/F/5-6316-2000 REV2 (hereafter 'document 6');
- Intermediate version (version '3') of Directive of the European Commission adapting to technical progress Directive 88/77/EEC relating to measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the emission of gaseous pollutants from positive-ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles, reference ENTR/F/5-6316-2000 REV3 (hereafter 'document 7');
- Intermediate version (version '4') of Directive of the European Commission adapting to technical progress Directive 88/77/EEC relating to measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the emission of gaseous pollutants from positive-ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles, reference ENTR/F/5-6316-2000 REV4 (hereafter 'document 8');
- Memorandum to the European Commission concerning the above-mentioned directive, reference ENTR F/5 - 6316/00 (hereafter 'document 9').

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

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

In the context of this review, the European Commission has carried out a renewed, thorough search and, as mentioned in part 1 of this decision, identified documents 3-9 and assessed them from the point of view of the applicability of the exceptions in Article 4 of Regulation (EC) No 1049/2001.

Following this assessment, I can inform you that (wide) partial access is granted to document 3 and full access is granted to documents 4-9.

With regard to documents 1 and 2 identified at the initial stage, I can inform you that (wide) partial access thereto is granted. The relevant undisclosed parts of the documents require protection under the exceptions in Article 4(1)(b) of Regulation (EC) No 1049/2001 (protection of privacy and the integrity of the individual).

Please also note that the relevant parts of documents 1-2 contain information unrelated to Directive 2001/27/EC<sup>4</sup> and therefore, they fall outside the scope of your application.

## **2.1. Protection of 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*)<sup>5</sup>, 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 data<sup>6</sup> (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/EC<sup>7</sup> (hereafter 'Regulation (EU) 2018/1725').

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

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<sup>4</sup> Commission Directive 2001/27/EC of 10 April 2001 adapting to technical progress Council Directive 88/77/EEC on the approximation of the laws of the Member States relating to measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the emission of gaseous pollutants from positive-ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles. OJ L 107 of 18.4.2001, p. 10–23.

<sup>5</sup> 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.

<sup>6</sup> OJ L 8 12.1.2001, p. 1.

<sup>7</sup> OJ L 205 21.11.2018, p. 39.

the Union concerning the protection of personal data, and in particular with [...] [the Data Protection] Regulation’.<sup>8</sup>

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’.<sup>9</sup>

Documents 1-3 include the names and contact details of staff members of the European Commission not holding any senior management position. They include also names and surnames of third parties (representatives of the Member States ministries and Permanent Representations).

The names<sup>10</sup> 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.<sup>11</sup> 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,

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<sup>8</sup> *European Commission v The Bavarian Lager* judgment, cited above, paragraph 59.

<sup>9</sup> 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.

<sup>10</sup> *European Commission v The Bavarian Lager* judgment, cited above, paragraph 68.

<sup>11</sup> 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.

establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your confirmatory application, 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, included in the relevant undisclosed parts of documents 1 and 2, 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 the exception in 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**

(Wide) partial access is hereby granted to documents 1 and 2.

### **5. MEANS OF REDRESS**

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



*For the Commission*

