



EUROPEAN COMMISSION

Secretariat-General

Directorate C – Transparency, Efficiency & Resources

The Director

Brussels
SG.C.1/ED

By registered mail with AR

Mr Le Louarn Adrien
Parlement européen
Bât. Altiero Spinelli 07H357
60, rue Wiertz
B-1047 Brussels
Belgium

Copy by email:
[ask+request-9726-
be332b30@asktheeu.org](mailto:ask+request-9726-be332b30@asktheeu.org)

Subject: Your application for access to documents – GESTDEM 2021/4286

Dear Mr Le Louarn,

I refer to your request of 28 June 2021, registered on 29 June 2021 in which you make a request for access to documents, under the above-mentioned reference number.

1. SCOPE OF YOUR REQUEST

You request access to, I quote:

‘1. Letters, email and documents sent by civil society actors (NGOs, companies, business associations, chambers of commerce, etc.) to Commissioner Jourova and her cabinet in relation with the sustainable corporate governance and the corporate due diligence legislative process.

2. Minutes and notes from meetings (including phone call and videoconferences) held between Commissioner Jourova, her cabinet and civil society actors (NGOs, companies, business associations, chambers of commerce, etc.) in relation with the sustainable corporate governance and the corporate due diligence legislative process. Those include the meetings already registered in the Transparency Register and Commissioner Jourova's webpage (05/05/2021 with BusinessEurope ; 29/04/2021 with Hospodářská komora České republiky (HK ČR) ; etc.)’.

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:

- Meeting request from NGOs - Exchange on EU Sustainable Corporate Governance & Corporate Due Diligence - Ares(2021)1981468 (hereafter 'document 1')
- Report from the meeting of Cabinet Jourova with representatives of NGOs on Sustainable Corporate Governance on 7 April 2021, Ares(2021)4862432 (hereafter 'document 2')
- Email on Responsibility in Supply Chains, SWP Comment 2021/C 21 Ares(2021)2074289 (hereafter 'document 3')
- Meeting request between Ms Jourova and BusinessEurope, Ares(2021)2104751 (hereafter 'document 4')
- Reply to the meeting request between Ms Jourova and BusinessEurope, Ares(2021)2173520 (hereafter 'document 5')
- Report from the meeting between Ms Jourova and BusinessEurope, Ares(2021)3017937, (hereafter 'document 6')
- Report from CAB Jourova and CAB PRES meeting with Business Europe on Sustainable Corporate Governance Ares(2021)2765192 (hereafter 'document 7')
- Report from CAB Jourova meeting with Deutsche Post DHL Group on sustainable corporate governance on 22/04/2021, Ares(2021)2765262 (hereafter 'document 8')
- DPDHL Sustainability Roadmap, Ares(2021)2765262, (hereafter 'document 9')
- Request for a video call with Ms Jourova - recent resolution of the European Parliament on Corporate due diligence and corporate responsibility matters - Ares(2021)2044559 (hereafter 'document 10')
- Reply to the request for a video call with Ms Jourova - recent resolution of the European Parliament on Corporate due diligence and corporate responsibility matters, Ares(2021)2173472 (hereafter 'document 11')
- Report meeting of Vice-President Jourova with Vladimir Dlouhy, President of the Czech Chamber of Commerce and Deputy-President of Eurochambres on Sustainable Corporate Governance, 29/04/2021, Ares(2021)2871290, cover page and report (hereafter 'documents 12 and 13')
- Email on ECCJ materials on the upcoming EU directive on sustainable corporate governance (due diligence) & civil liability, Ares(2021)3008490 (hereafter 'document 14')
- FAQ Civil liability in the Sustainable Corporate Governance Directive, Ares(2021)3008490 (hereafter 'document 15')
- Reply to email on ECCJ materials on the upcoming EU directive on sustainable corporate governance (due diligence) & civil liability, Ares(2021)3011406 (hereafter 'document 16')
- Report from the meeting with representatives of civil society organizations on the Sustainable Corporate Governance - 26/05/2021, Ares(2021)3485198 (hereafter 'document 17')

- Call for a Redirection of EU Sustainable Corporate Governance Reform Proposals, endorsed by 50 academics from Nordic Business Schools, Ares(2021)3291754, cover email and call for redirection signed (hereafter 'documents 18 and 19')
- Email from Confederation of Swedish Enterprise on the initiative on Corporate Governance, Ares(2021)3448568 (hereafter 'document 20')
- Two-page overview from Confederation of Swedish Enterprise on the initiative on Corporate Governance, Ares(2021)3448568 (hereafter 'document 21')
- Reply to the email from Confederation of Swedish Enterprise on the initiative on Corporate Governance, Ares(2021)3450323 (hereafter 'document 22')
- Report from the meeting with the Confederation of Swedish Enterprise on Sustainable Corporate Governance, 07/06/2021, Ares(2021)3824992 (hereafter 'document 23')
- Email on NGO briefing on sustainable corporate governance and board obligations Ares(2021)4028341 (hereafter 'document 24')
- NGO policy briefing on sustainable corporate governance and board obligations Ares(2021)4028341 (hereafter 'document 25')
- Report from the meeting of Cabinet Jourova with Global Witness on the Sustainable Corporate Governance Initiative – 27/07/2021, Ares(2021)4808957 (hereafter 'document 26')
- Reply to the email on NGO briefing on sustainable corporate governance and board obligations, dated 9 July 2021, (hereafter 'document 27')
- NGO briefing on sustainable corporate governance and board obligations plus reply, Ares(2021)4808064 (hereafter 'document 28')
- NGO concerns on the Sustainable Corporate Governance proposal - request for possible call, Ares(2021)4034628 (hereafter 'document 29')
- NGO concerns on the Sustainable Corporate Governance proposal plus Ms Constantin reply to the NGO coalition representative - Ares(2021)4054853 (hereafter 'document 30')
- Email on meeting request to Ms Jourova: role of industry schemes & industry initiatives in EU mandatory due diligence legislation (SGC), Ares(2021)4315089 (hereafter 'document 31')
- Letter to Ms Jourova: meeting request - role of industry schemes & industry initiatives in EU mandatory due diligence legislation (SGC), Ares(2021)4315089 (hereafter 'document 32')
- Reply to email on meeting request to Ms Jourova: role of industry schemes & industry initiatives in EU mandatory due diligence legislation (SGC), Ares(2021)4556103 (hereafter 'document 33')
- Report from the meeting of Cabinet Jourova with the Responsible Business Alliance (RBA) on Sustainable Corporate Governance – 28/07/2021, Ares(2021)4837661 (hereafter 'document 34')

- Letter on behalf of the German civil society, Initiative Lieferkettengesetz (Supply Chain Law), representing 128 NGOs, trade unions, churches regarding the European Commission's forthcoming proposal for an EU directive on Sustainable Corporate Governance, cover email and letter, Ares(2021)4366429 (hereafter 'documents 35 and 36')
- Danish Committee on Corporate Governance: Joint letter on the European Commission's upcoming initiative on sustainable corporate governance, cover email and letter, Ares(2021)4368707 (hereafter 'documents 37 and 38')
- BusinessEurope letter on upcoming Sustainable Corporate Governance package: impact assessment concerns, cover email and letter, Ares(2021)2900189 (hereafter 'documents 39 and 40')
- Reply to BusinessEurope letter on upcoming Sustainable Corporate Governance package: impact assessment concerns, cover email and letter, Ares(2021)4776850 (hereafter 'documents 41 and 42')
- Joint statement from group of stakeholders on sustainable corporate governance, Ares(2021)4862461, cover email and letter (hereafter 'documents 43 and 44')

I can inform you that wide partial access is granted to the requested documents only subject to redactions due to the protection of personal data 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.

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.

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’).

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, functions, contact details of persons (addresses, email addresses, phone numbers), handwritten signatures, including those 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.

³ OJ L 295, 21.11.2018, p. 39.

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.

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 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 requested 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 that point (b) of Article 4(1) 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

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.

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.

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 sincerely,

Tatjana Verrier
Director

Enclosures: 44 documents