Brussels, 25.1.2023
C(2023) 752 final

Mr Peter Teffer
Overtoom 197
1054 HT Amsterdam
The Netherlands

DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) NO 1049/2001

Subject: Your confirmatory application for access to documents under Regulation (EC) No 1049/2001 - GESTDEM 2022/3208

Dear Sir,

I refer to your letter of 10 August 2022, registered on 11 August 2022, in which you submitted 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 (hereafter ‘Regulation (EC) No 1049/2001’).

I apologise for the delay in the handling of your request.

1. SCOPE OF YOUR REQUEST

In your initial application of 2 June 2022, addressed to the European Commission, you requested access to, I quote:

‘all letters, e-mails and notes sent by European Commissioners to President Von der Leyen regarding the 1 June 2022 College discussion about Poland's Recovery and Resilience Plan (point 12.3 on the College agenda), including but not limited to those by Commissioners Reynders and Jourova’.

The application was attributed to the Secretariat-General of the European Commission (hereafter ‘the Secretariat-General’).

In its initial reply dated 27 July 2022, Directorate B of the Secretariat-General refused access to the requested documents, based on the exception laid down in the second subparagraph of Article 4(3) (protection of the decision-making process) of Regulation (EC) No 1049/2001.

In your confirmatory application, you request a review of this position and underpin your request with detailed arguments.

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 review of the reply given by the Directorate-General concerned at the initial stage.

Following this review and assessment, the European Commission is pleased to inform you that wide partial access can be granted to the following documents as falling under the scope of your request:

- Letter from Commissioner Johansson addressed to the President of the European Commission dated 1 June 2022, registered under reference Ares(2022)4081487 (hereafter ‘document 1’);
- Letter from Vice-President of the European Commission Věra Jourová addressed to the President of the European Commission dated 31 May 2022, registered under reference Ares(2022)4056738 (hereafter ‘document 2’);
- Letter from Commissioner Reynders addressed to the President of the European Commission dated 1 June 2022, registered under reference Ares(2022)4079706 (hereafter ‘document 3’).

Please note that certain information contained in those documents has to be withheld based on exception to the right of access laid down in Article 4(1)(b) (protection of the privacy and integrity of natural persons) of Regulation (EC) No 1049/2001.

Please find copies of the documents enclosed.

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*)

---

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 (hereafter ‘Regulation (EC) No 45/2001’) becomes fully applicable.


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’.

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’.

The requested documents contain personal data such as the email address, the office numbers and handwritten signatures of the Members of the European Commission concerned.

The names 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 […] the 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’.

---

6 European Commission v The Bavarian Lager judgment, cited above, paragraph 59.
7 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.
8 European Commission v The Bavarian Lager judgment, cited above, paragraph 68.
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. 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 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, 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 Article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exception 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 access to the documents requested.

---

As explained above, wide partial access is granted to documents 1-3, subject only to redactions of personal data under Article 4(1)(b) of Regulation (EC) No 1049/2001.

You may reuse public documents that have been produced by the European Commission based on the Commission Decision on the reuse of Commission documents. You may reuse the documents disclosed free of charge and for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. The European Commission does not assume liability stemming from the reuse.

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
Ilze JUHANSONE
Secretary-General

Enclosures: (3)

---