



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate B
SG-B-3 Ethics

Brussels, **23 JAN. 2015**
SG/B.3/MIA-DCB

Ms Vicky Cann
CEO
Rue d'Edimbourg 26
B-1050 Brussels

By e-mail:
[ask+request-1597-
400112d4@asktheeu.org](mailto:ask+request-1597-400112d4@asktheeu.org)

Subject: Your application for access to documents in accordance with Regulation 1049/2001– Ref. GestDem 2014/5427

Dear Ms Cann,

We refer to your e-mail dated 13 November 2014 and registered on 14 November 2014 under the above-mentioned reference number.

In your e-mail, you request access to "*... a copy of C(2014) 1328 and all associated documents including emails, correspondence and meeting notes (including to and from Ms Ferrero-Waldner and Gamesa) which relate to this decision and all relevant opinions from the ad hoc ethical committee*".

1. SCOPE OF THE REQUEST

I have identified documents 14 documents falling within the scope of your request. You will find enclosed a detailed list.

Please note that the extracts of the minutes of the 2076th Commission meeting of 25 February 2014 concerning the decision on former Commissioner Ms Ferrero Waldner post-mandate activity in *Gamesa* (document n° 13) are already in the public domain (see copy enclosed).

I would also like to refer to letter of 28 November 2014 [Ref. Ares(2014)3988859] by which, in accordance with the above Regulation, the time limit for reply was extended until the 6 January 2015. However, as regards documents n° 1, 3, 5 and n° 10, we will not be in a position to complete the examination of your application within the extended time limit.

Commission européenne/Europese Commissie, 1049 Bruxelles/Brussel, BELGIQUE/BELGIË - Tel. +32 22991111
Office: BERL -

http://ec.europa.eu/dgs/secretariat_general/

The above-mentioned documents are the letters of the former Commissioner to the Commission and/or include in their annexes documents issued by other third parties or attachments with copies of those letters. The Commission has consulted the author on their possible disclosure under Regulation 1049. We are expecting a reply in the coming days.

I apologise for the inconvenience that this delay may cause and I will do my best to provide you with a complementary reply on these documents as soon as the position of the author of the documents is addressed to the Commission.

2. CONCLUSIONS UNDER REGULATION 1049/2001

Following the examination of your request and of the remaining documents in the list, I have come to the following conclusions.

I am pleased to provide you with full access to the cover note of document n° 7 (copy enclosed). However, only parts of documents n° 2, n° 8, the attachment to document n° 11 and document n° 12 can be made public at this stage. Access to the non-disclosed parts of the above-mentioned documents has to be refused as they are covered by the exception foreseen in Article 4(1) letter b) (protection of privacy and personal data) of Regulation No 1049/2001.

Document n° 8 is the opinion of the Ad hoc Ethical Committee of 1 October 2013 and document n° 12 contains the Communication of the President to the Commission (OJ 2076) titled in French, "*Activities après cessation de fonction d'un membre de la Commission- Communication de M. le Président*" with the reference C(2014)1328. A draft version of this document is attached to document n° 11. These documents have recently been partially disclosed to the public in the framework of other access to documents requests. You will find copies enclosed.

In the present case, the non-disclosed parts of the Opinion of the Ad Hoc Ethical Committee of 1 October 2013 and of the Communication of 25 February 2014 including the draft version, which is enclosed to document n° 11, contain personal details on the post-office activity of the former Commissioner concerned. This is also the case of the deleted parts in the body of document n° 2. The requested documents were established in the framework of the procedure foreseen by the Code of Conduct for Commissioners. The Commission adopted a final decision on 25 February 2014. However, the non-disclosed parts of these documents have not been rendered public through the Commission minutes.

The deleted parts refer to the opinion of the Ad Hoc Ethical Committee on the respect of the procedure foreseen in point 1.2.1 of the Code of Conduct and on the compatibility of this activity with Article 245(2) of the TFEU. These parts contain detailed references to parts of the contract signed by the former Commissioner with *Gamesa* and to the correspondence with the concerned Commissioner on this matter.

Disclosing the information provided by the former Commissioner in this context, including the parts extracted from the contract with *Gamesa*, the correspondence of the Commission's services with the former Commissioner as well as the related deliberations, which include the opinion of the Ad Hoc Ethical Committee, would reveal personal data

and information exchanged in confidence, in the framework of the treatment of a specific file.

In its judgment in the *Bavarian Lager* case¹, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001² (hereinafter the 'Data Protection Regulation') becomes fully applicable.

Article 2(a) of Data Protection Regulation provides that "*personal data*' shall mean any information relating to an identified or identifiable person [...].As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*)³, there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of "private life."

The requested documents contain many elements on the professional activities of a former Commissioner which undoubtedly constitute personal data in the meaning of Article 2(a) of Regulation (EC) No 45/2001, as they reveal information about an identified or an identifiable person. According to Article 8(b) of the Data Protection Regulation, which is fully applicable in this case, personal data shall only be transferred to recipients if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced.⁴ Those two conditions are cumulative.⁵

I consider that in the present case the necessity of disclosing the aforementioned personal data to you has not been established in your request.

As regards documents n° 2, 4, 6, 9, 11 and n° 14, please note that certain parts have also been deleted. These parts correspond to the address, e-mail, salary amount and related contractual conditions of the former Commissioner as well private data as of third persons. The case-law mentioned above applies also to the deleted parts of these documents in so far they also contain personal data and consequently, cannot be disclosed.

Consequently, access to personal data contained in relevant parts of the above-mentioned documents has to be refused on the basis of the exception provided for in Article 4 (1) (b) of Regulation 1049/2001.

¹ Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, *European Commission v The Bavarian Lager Co. Ltd.*

² 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, Official Journal L 8 of 12.1.2001

³ Judgment of the Court of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between *Rechnungshof* and *Österreichischer Rundfunk*, paragraph 73.

⁴ Cf. Judgment of the Court of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between *Rechnungshof* and *Österreichischer Rundfunk*, paragraph 73.

⁵ Judgment of the Court (Grand Chamber) of 29 June 2010 in case C-28/08 P, *Commission v Bavarian Lager*, paragraphs 56, 63, 68, 76-79.

If you wish to appeal against this decision, you should write to the Commission Secretary-General at the address sg-acc-doc@ec.europa.eu. You have fifteen working days from receipt of this letter in which to appeal.



Marianne Klingbeil
Director SG B f.f.

Annexes

Cc: SG-DOSSIERS-ACCES@ec.europa.eu