



EUROPEAN COMMISSION  
SECRETARIAT-GENERAL

Directorate B

Brussels,  
SG/B.3/MIA-DCB

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

**Ref:** My reply of 26 January 2015 Ares(2015)305138

Dear Ms Cann,

Further to the above-mentioned reply, I am pleased to grant you partial access to the following documents:

1. Contract between Ms Ferrero Waldner and GAMESA SA ("*Contrato de arrendamiento de servicios profesionales*") (hereinafter: the contact) attached to the letter of the Ombudsman to the Commission's President of 3 July 2013 [Ref. 1533/2014- S2013-176967]
2. E-mail of 15 July 2013 referring to the contract between the former Commissioner and GAMESA SA;
3. Letter of 18 July 2013 including in its attachment a copy of the contact between the former Commissioner and GAMESA SA, and
4. Letter of 18 December 2013 and enclosed statement by GAMESA SA.

You will find the copies enclosed.

However, access to the deleted parts of documents n° 1, 2, 3 and 4 has to be refused for the following reasons.

## 1. POSITION OF THE THIRD PARTY

The deleted parts of documents n°, 2, 3 and 4 contain the e-mail and address of the former Commissioner as well as references extracted from the contract between Ms Ferrero Waldner and GAMESA.SA.

Document n° 1<sup>1</sup> and the attachment to document n° 3 are copies of the above-mentioned contract. The copy of the contract forwarded by the Ombudsman to the Commission did not contain the personal data of the parties to the contract. Further to comparison, the Commission would like to underline that both documents are however identical.

The former Commissioner was consulted on the disclosure of her correspondence with the Commission as well as on the disclosure of her contact with GAMESA SA., namely documents n° 1 to 4. In her reply, Ms Ferrero Waldner agreed to the partial disclosure of her letters to the Commission but refused the disclosure of her contract with GAMESA.SA and considered that "*a personal contract with a company like [hers] with Gamesa should remain confidential*".

In this regard, the Commission notes that the contract in question contains a clause of confidentiality which forbids the parties its disclosure.

## 2. ASSESSMENT BY THE COMMISSION

### 2.1. Protection of privacy and personal data

Documents n° 2, 3 and 4 contain the personal address of the Commissioner and/or personal data of third persons representing GAMESA SA and for obvious reasons this is personal data covered by the exception provided for in Article 4 (1) (b) of Regulation 1049/2001. Document n° 1 is the contract with this company. This document is also attached to documents n° 3 and contains private data also covered by the above mentioned exception.

Disclosing this information would reveal personal data and may undermine the privacy of the concerned former Commissioner and third persons.

In its judgment in the *Bavarian Lager* case<sup>2</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001<sup>3</sup> (hereinafter the 'Data Protection Regulation') becomes fully applicable.

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<sup>1</sup> The former Commissioner refers to the partial version of the contract sent to the Commission in her letter of 18 July 2014( see document n°3, point 1)): "...*verifying what you have sent to me, I have to state that the first page was manipulated by the "third party" abolishing the name....of the President CEO of Gamesa.*"

<sup>2</sup> Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, European Commission v The Bavarian Lager Co. Ltd.

<sup>3</sup> 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

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)<sup>4</sup> , there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of "private life."*

The requested documents, in particular the contracts in question contain many elements on the professional activities of the former Commissioner in a private company 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.<sup>5</sup> Those two conditions are cumulative.<sup>6</sup>

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

Consequently, access to personal data contained in the 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.

## **2.2. Protection of commercial interests**

Article 4(2) first indent of Regulation No. 1049/2001 stipulates that: "*The institutions shall refuse access to a document where disclosure would undermine the protection of:... — commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure. "*

The Commission considers that disclosure of the contract of Ms Ferrero Waldner with GAMESA.SA, which was not accepted by the former Commissioner, would also undermine the commercial interests of this company.

It would not only make public the employment conditions and the remuneration details of the former Commissioner but also her specific tasks in the company which are commercial information. Disclosing the details of the contract could, give an idea of the objectives, working methods and areas of interest of GAMESA and harm its commercial interests. It would also allow to gather important information of business relevance.

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<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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.

Disclosing the contract would also reveal the financial contracting capacity of GAMESA and undermine its negotiating position with future potential partners. On the basis of the above reasoning, the Commission considers that the contract is covered by the exceptions to the right of access laid down in Article 4(2), first indent and in Article 4(3) first subparagraph of Regulation 1049/2001.

### **3. PARTIAL ACCESS**

Please note that partial disclosure of the contract would lead to releasing loose parts of text out of the context of the contract and of the Commission decision on the former Commissioner post-office activity. Therefore, granting further partial access to these documents would be meaningless.

### **4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exceptions under Article 4(2) and (3) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, first, be a public interest and, second, outweigh the harm caused by disclosure, i.e. outweigh the protected interest.

In your application you did not state anything which justified an overriding public interest going beyond the commercial interests of GAMESA.SA

Moreover, the public interest in disclosure is properly served by the publication of the minutes of the Commission concerning this decision as well as by the disclosure to the public of all the related documents in the framework of this request. The Commission cannot see any public interest in disclosing a private contract between the former Commissioner and GAMESA.SA that would outweigh the need to protect the commercial interests of GAMESA.SA.

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](mailto: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](mailto:SG-DOSSIERS-ACCES@ec.europa.eu)