



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate B

Brussels, **03 FEB. 2015**
SG/B.3/MIA-DCB

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

By e-mail:

ask+request-1694-956d8623@asktheeu.org

Subject: Your application for access to documents in accordance with Regulation 1049/2001– Ref. GestDem 2015/348

Dear Ms Cann,

We refer to your e-mail dated 15 January 2015 and registered on the same date under the above-mentioned reference number.

In your e-mail, you request "...further to the documents already received under GestDem 2014/5422, I am requesting copies of all subsequent applications by Jose Manuel Barroso which seek Commission authorisation for new professional activities under the commissioner code of conduct. I would further like to request any emails, correspondence and meeting notes which relate to these applications; all opinions from the ad hoc ethical committee on each case; and copies of the Commission's final decision in each case."

I have identified 8 documents falling within the scope of your request:

1. Letter of Mr Barroso to President Mr Juncker of 26.11.2014 [Ref. Ares(2014)3860756];
2. Note of Ms Day to the members of the Ad Hoc Ethical Committee of 03.12.2014 [Ref. Ares(2014)4052322];
3. Note of the Ad Hoc Ethical Committee of 09.12.2014 [Ref. Ares(2014)4146346];
4. LS Consultation of SG of 10.12.2014 and reply of the LS of 12.12.2014;
5. Communication C(2014)9875 of 12.12.2014;
6. PV(2014)2110 of 16 December 2014;
7. Letter of Ms Day to Mr Barroso of 16.12.2014 [Ref. Ares(2014)4232355];
8. Note of Ms Day to Members of the Ad-Hoc Ethical Committee of 17.12.2014 [Ref. Ares(2014)4246874].

You will find a detailed list enclosed.

I would like to call your attention to the fact that document n° 2 contains in its enclosures "templates" also called "information fiches" to the attention of the Ad Hoc Ethical Committee. The information in these documents can be found in the opinion of the Committee and in the Commission's decision disclosed below. Consequently, I understand that the content of these fiches is of no further interest to you. If you do not share this view, please let us know.

1. PUBLIC DOCUMENTS

Document n° 6 contains the extract of the minutes of the Commission meeting in which the decision on Mr Barroso's post-mandate activity was adopted. Please note that the minutes are already available to the public and therefore, a copy is not enclosed.

2. CONCLUSIONS UNDER REGULATION 1049/2001

Following the examination of your request and of the documents concerned, I am pleased to grant you:

- Full access to document n° 5. Full access is granted as well to the cover note to documents n° 2 and n° 8. Please note that the deleted parts of this last document contain information on decisions regarding other former Commissioners, which are not covered by your request and therefore, fall outside its scope. However, these parts of the document are covered by the scope of your remaining requests (n° 2015/338, 2015/339, 2015/340 and 2015/349) and will be addressed in the corresponding replies;
- Partial access to document n° 1, n° 3 and n° 7. The deleted parts in document n° 1 and n° 7 correspond to the address and e-mail of the former President. The deleted part in the upper part of the document n° 3, corresponds to the name of a Commission official;
- Partial access to the cover e-mails accompanying document n° 4. The deleted parts correspond to the name, telephone/office numbers and e-mail addresses of the Commission officials in charge of the file;

You will find copies enclosed.

Please note that the document attached to documents n° 7 and n° 8 is document n° 5.

The reasons for the refusal of the deleted part of document n° 1 and 3, to the cover e-mails to document n° 4 and to the cover note to document n° 7, are set out below.

The deleted parts of the above-mentioned documents n° 1 and n° 7 contain the address and the e-mail of the former President and for obvious reasons this personal data is covered by the exception provided for in Article 4 (1) (b) of Regulation 1049/2001. This is also the case of the deleted parts in document n° 3 and in the cover e-mails accompanying document n° 4, which contain the names, telephone/office numbers and e-mails of the Commission's officials in charge of the file. Disclosing this information

would reveal personal data and may undermine the privacy of the concerned former Commissioner as well as of the Commission officials in charge of the 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.

The concerned documents contain elements 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.³ Those two conditions are cumulative.⁴

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.

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

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 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.

⁴ 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.