



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate B

Brussels, **31 MARS 2015**
SG/B.3/MIA-DCB

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

By e-mail:
ask+request-1783-54fcde17@asktheeu.org

Subject: Your application for access to documents in accordance with Regulation 1049/2001– Ref. GestDem 2015/1107

Dear Ms Cann,

We refer to your e-mail dated 23 February 2015 and registered on 24 February 2015 under the above-mentioned reference number.

In your e-mail, you request "*...Further to the documents already received under GestDem 2015/338, copies of all subsequent applications by Neelie Kroes which seek Commission authorisation for new professional activities under the commissioner code of conduct, including her new role at Bank of America Merrill Lynch. 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 Ms Kroes to Ms Day of 17.01.2015 [Ref. Ares(2015)217934];
2. Note of Ms Day to the Ad Hoc Ethical Committee of 26.01.2015 [Ref. Ares(2015)297869];
3. Opinion of the Ad Hoc Ethical Committee of 30 January 2015 [Ref. Ares(2015)369781];
4. LS Consultation [Ref Ares(2015)431727 and Ares(2015)431727];
5. Decision of the Commission C(2015)612 of 2 February 2015;

6. PV (2015) of 4.02.2015- OJ 2114;
7. Letter of Ms Day to Ms Kroes of 04.02.2015[Ref. Ares(2015)456563];
8. Note of Ms Day to Members of the Ad-Hoc Ethical Committee of 04.02.2015 [Ref. Ares(2015)459409].

You will find a detailed list enclosed.

1. PUBLIC DOCUMENTS

Document n° 6 contains the extracts of the minutes of the Commission meeting in which the decisions on Ms Kroes 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 documents n°1, 2, 3 and 5 and to the draft decision attached to document n° 4. Full access is granted as well to the cover note to document n° 8.
- Partial access to document n° 7 and to the cover e-mails accompanying document n° 4.

You will find copies enclosed.

Please note that the document attached to documents n° 7 and 8 correspond to document n° 5 and the document attached to document n° 2 as well as to the e-mail of the SG of 30 January 2015 included in document n° 4, is document n°1.

The reasons for the refusal of the deleted parts of the above-mentioned documents are set out below.

The deleted parts of document n° 7 contain the e-mail address of the former Commissioner and for obvious reasons this is personal data 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 the cover e-mails included in document n° 4, which contain the names and the e-mail addresses 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 Commissioner as well as of Commission officials.

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.

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

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

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.