



EUROPEAN COMMISSION  
SECRETARIAT-GENERAL

Directorate B  
The Director

Brussels,  
SG/B3/MIA

Ms Margarida da Silva  
CEO  
Rue d'Edimbourg 26,  
B-1050 Bruxelles

By e-mail:

ask+request-3975-09ddebe5@asktheeu.org

**Subject: Your application for access to documents in accordance with Regulation 1049/2001– Ref. GestDem 2017/849**

Dear Ms da Silva,

We refer to your e-mail dated 9 February 2017 and registered on 13 February 2017 under the above-mentioned reference number.

In your e-mail, you request access to *"... documents which contain the following information:*

- *all opinions from the ad hoc ethical committee in regards to Neelie Kroes, including the absence of the Mint Holdings directorship from Kroes' Declaration of Interest and the omission of income in 2015,*
- *any emails, correspondence and meeting notes which relate to the ad hoc ethics committee analysis of these cases".*

**1. SCOPE OF YOUR APPLICATION**

I have identified 13 documents and annexes falling within the scope of your request (see also list enclosed):

1. E-mail of former Vice-President Ms Kroes to President Juncker of 16.09.2016, informing of the publication of an article concerning Mint Holdings and annex e-mail to journalists and newspapers [Ref. Ares(2016) 5486115];
2. Letter of President Juncker to former Vice-President Ms Kroes of 22.09.2016 requesting additional information [Ref. Ares(2016)6012473];

3. Letter of former Vice-President Ms Kroes to President Juncker of 26.09.2016 and annex [Ref. Ares (2016)5563597]
4. Note of the Secretary-General to the Ad Hoc Ethical Committee of 03.10.2016 and nine annexes [Ref. Ares(2016) 5717567];
5. Letter of President Juncker to former Vice-President Ms Kroes of 03.10.2016 informing her of the follow-up given [Ref. Ares(2016)5797326];
6. E-mail and annex of former Vice-President Ms Kroes to President Juncker of 07.10.2016 providing additional information and annex [Ref. Ares(2016)5811581];
7. Note of the Secretary-General to the Ad Hoc Ethical Committee of 07.10.2016 containing the additional information provided by former Vice-President Ms Kroes and annex [Ref. Ares(2016) 5817893];
8. Opinion of the Ad Hoc Ethical Committee of 16.11.2016 [Ref. Ares(2016) 6766602];
9. Letter of the Secretary-General to former Vice-President Ms Kroes informing of the opinion of 06.12.2016 the Ad Hoc Ethical Committee and asking for comments and annex [Ref. Ares(2016) 6807563];
10. E-mails of former Vice-President Ms Kroes to the Secretary-General of 09.12.2016 with comments on the opinion of the Ad Hoc Ethical Committee on Mint Holdings [Ref. Ares(2016) 6807563];
11. E-mail of former Vice-President Ms Kroes to the Secretary-General of 09.12.2016 with comments on the opinion of the Ad Hoc Ethical Committee on her Income Declaration 2015 [Ref. Ares(2016) 6807563];
12. Decision de la Commission C(2016) 8715 of 21 December 2016 regarding the declaration of income and interests of a former member of the Commission;
13. Commission PV (2016)2194 of 21 December 2016;

## **2. PUBLIC DOCUMENTS**

Document n° 13 contains the extracts of the minutes of the Commission meeting in which the decision on Ms Kroes declaration of income and interests was adopted. Please note that the minutes are already available to the public and therefore a copy is not enclosed.<sup>1</sup>

Documents n° 3.1, n° 4.3.1 and n° 4.4 are also public documents (see list enclosed).

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<sup>1</sup> <http://ec.europa.eu/transparency/regdoc/rep/10061/2016/EN/PV-2016-2194-FI-EN-MAIN-PART-1.PDF>

### **3. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001**

#### **3.1. Document fully disclosed under other access to documents requests**

The Commission has fully disclosed to the public the opinion of the Ad Hoc Ethical Committee listed under n° 8 in the framework of a previous access to documents request. You will find a copy enclosed.

#### **3.2. Documents fully disclosed under the current request Gestdem 2017/849**

I am pleased to inform you that document n° 2, (corresponding to annex 4.2) n° 5 and n° 7 can be fully disclosed. You will find copies enclosed.

#### **3.3. Documents refused under the current request Gestdem 2017/849**

I inform you that access to the entirety of documents n° 4.6 to 4.9 and n° 11, must be fully refused.

#### **3.4. Documents partially disclosed under the current request Gestdem 2017/849**

Finally, partial access is granted to parts of documents n° 1, n° 1.1 (corresponding to annex n° 4.1), n° 3, n° 4, n° 4.5, n° 6, n° 6.1, n° 7.1; n° 9, n° 10 and n° 12.

The reasons for the refusal to grant access to the entirety of the documents mentioned under point 3.3 or to the deleted parts of the documents mentioned under point 3.4 are set out below.

Documents n° 4.6 to 4.9 and n° 11 are the declarations of former Vice-President Kroes with regard to Article 7 of Regulation n° 422/67/EEC and two e-mails about the income for professional services. The documents contain substantial and explicit information of private nature which is essential for the Commission services in order to calculate and settle her pecuniary rights to the transitional allowance and the corresponding due entitlements. This is also the case of the deleted parts in the body of documents n° 4 and n° 12. Documents n° 3, n° 4.6 to 4.9, n° 6, n° 6.1, n° 7.1, n° 10 and n° 11 also contain Ms Kroes private bank account numbers, address, signature and telephone numbers and/or personal data including private data of other third parties (names, surnames, office addresses, signatures and telephone numbers together/or with the name of the organisation they represent and their position therein).

I have examined the possibility of granting you a partial access to the data provided by former Vice-President Ms Kroes in her declarations under documents n° 4.6 to 4.8 and to the e-mails under documents n° 4.9 and n° 11. However, with the exception of the parts of documents n° 3, n° 4, n° 6, n° 6.1, n° 7.1, n° 10 and n° 12 (partially disclosed), I consider that their content is fully covered by the above-mentioned exception.

The deleted parts of documents n° 1, n° 1.1 n° 4.5 and n° 9 also contain the names, surnames office addresses, signatures and telephone numbers of Commission staff members and/or the names, surnames, office addresses, signatures and telephone numbers of other third parties together and/or with the position they represent in private companies and organisations.

For obvious reasons this is personal data covered by the exception provided for in Article 4 (1) (b) of Regulation 1049/2001. Disclosing this information would reveal personal data and may undermine the privacy of the concerned individuals.

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.

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.<sup>4</sup> Those two conditions are cumulative.<sup>5</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 above-mentioned documents and in the relevant parts thereof has to be refused on the basis of the exception provided for in Article 4 (1) (b) of Regulation 1049/2001.

#### **4. MEANS OF REDRESS**

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission

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<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

<sup>4</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>5</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.

Secretary-General

Transparency unit SG-B-4

BERL 5/282

B-1049 Bruxelles

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P. Leardini', enclosed within a large, stylized oval loop.

Pascal Leardini

Annexes

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