



EUROPEAN COMMISSION
Neighbourhood and Enlargement Negotiations

R - RESOURCES
R.2 - LEGAL ISSUES

Brussels, 23 JUN 2017

By registered letter:
Ms. Anna Maskell
Rue d'Edimbourg 26
1050 Brussels
Belgium

Advance copy by email:
ask+request-4272-86ba2882@asktheeu.org

Subject: Your application for access to documents
Ref GestDem No 2017/2740

Dear Ms Maskell,

I refer to your e-mails dated 30 May 2017 and 1 June 2017 in which you make a request for a list of all DG NEAR's correspondence with and from representatives from the Energy Charter Secretariat and the Legal Advisory Committee of the Energy Charter Treaty and a list of meetings between DG NEAR officials and representatives from the Energy Charter Secretariat and the Legal Advisory Committee of the Energy Charter Treaty, from 1 January 2016 to 22 May 2017.

Based on the description provided in your application, we have drafted a table with the requested information. Please find enclosed this document, subject to redaction of personal data on the basis of Article 4(1)(b) of Regulation (EC) No. 1049/2001¹, regarding public access to European Parliament, Council and Commission documents.

The justifications on the protection of personal data are as follows.

Article 4(1)(b) of Regulation (EC) No. 1049/2001 provides that *"access to documents is refused where disclosure would undermine the protection of privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data"*.

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. Official Journal L 145 of 31 May 2001, p. 43

In Case C-28/08P², the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001³ becomes fully applicable.

Article 2(a) of Regulation (EC) No. 45/2001 provides that *"personal data' shall mean any information relating to an identified or identifiable person [...]"*. As the Court of Justice confirmed in Case C-465/00⁴, *"there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life"*.

The drafted table in the Annex contains names, functions and contact details of officials not forming part of senior management. It also contains names, functions and contact details of representatives of the European Community and European Charter. This information clearly constitutes personal data in the sense of Article 2(a) of Regulation (EC) No 45/2001.

Pursuant to Article 8(b) of Regulation (EC) No. 45/2001, the Commission can only transmit personal data to a recipient subject to Directive 95/46/EC⁵ 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. Those two conditions are cumulative⁶. Only if both conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EC) No 45/2001, can the processing (transfer) of personal data occur.

In the case C-615/13P, the Court of Justice ruled that the institution does not have to examine *ex officio* the existence of a need for transferring personal data⁷. In the same ruling, the Court stated that if the applicant has not established a need to obtain the personal data requested, the institution does not have to examine the absence of prejudice to the person's legitimate interests⁸.

In your applications, you do not put forward any arguments to establish the necessity of disclosing the requested personal data. Furthermore, there are reasons to assume that the legitimate interests of the individuals concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject it then to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No. 1049/2001, access cannot be granted to the redacted personal data included in the table.

2 Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd.*, Case C-28/08P, EU:C:2010:378, paragraph 59.

3 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 January 2001, p.1

4 Judgment of the Court of Justice 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*, EU:C:2003:294, paragraph 73.

5 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Official Journal L 281 of 23 November 1995, p. 31.

6 Judgment of the Court of Justice of 29 June 2010, *Bavarian Lager*, quoted above, paragraphs 77-78.

7 Judgment of the Court of Justice of 16 July 2015 in Case C-615/13P *ClientEarth v EFSA*, EU:C:2015:489, paragraph 47.

8 *Idem*, paragraphs 47-48.

I would also like to point out that Article 4(1)(b) has an absolute character and does not envisage the possibility to demonstrate the existence of an overriding public interest⁹.

In accordance with Article 7(2) of Regulation (EC) No. 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review its 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
Secretary-General
Transparency unit SG-B-5
BERL 5/327
B-1049 Brussels

or by email to:
sg-acc-doc@ec.europa.eu

Yours sincerely,


Christos Komninos
Head of Unit

Encl./

⁹ The exception mentioned under art.4(1)b applies in an absolute way if the disclosure affects the privacy and protection of the individual, meaning that it has primacy over the public interest in releasing the content.