



EUROPEAN COMMISSION

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European Parliament
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**DECISION OF THE SECRETARY-GENERAL ON BEHALF OF THE EUROPEAN COMMISSION
PURSUANT TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N°
1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2017/7583+7585+7593**

Dear Ms Reda,

I refer to your e-mails of 22 January 2018², 6 February 2018³ and 16 February 2018⁴, registered on 23 January 2018, 7 February 2018 and 16 February 2018 respectively, in which you submit three confirmatory applications in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents⁵ (hereafter, 'Regulation 1049/2001').

1. SCOPE OF YOUR REQUEST

In your initial applications of 21 December 2017, addressed to the Directorate-General for Competition, the Directorate-General for Trade and the European Political Strategy Centre respectively, you requested access to:

- *All information held by COMP/TRADE/EPSC concerning both the draft paper called "The economics of online news aggregation and neighbouring rights for news publishers" which the Joint Research Centre, on 25 October 2016 presented to DG COMP/DG TRADE/EPSC (as well as comments, analysis, position papers,*

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Registered under reference number GESTDEM 2017/7583.

³ Registered under reference number GESTDEM 2017/7593.

⁴ Registered under reference number GESTDEM 2017/7585.

⁵ Official Journal L 145 of 31.5.2001, p. 43.

memos, etc.) or any information concerning copyright or neighbouring rights for press publishers.

In their initial replies 22 January 2018, 26 January 2018 and 6 February 2018, the European Political Strategy Centre, the Directorate-General for Trade and the Directorate-General for Competition informed you that they do not hold any documents that would correspond to the description given in your application.

Through your confirmatory applications you request a review of these positions, and refer to a specific e-mail the Directorate-General for Competition, the Directorate-General for Trade and the European Political Strategy Centre received on 25 October 2016 (registered under Ref. Ares(2017)6256585).

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

Following the explanations in your confirmatory applications, the Commission has carried out a renewed, thorough search for possible documents falling under the scope of your requests. Based on this renewed search, the Commission has identified two e-mails which correspond to the description of your request:

- E-mail from the Joint Research Centre to the Interservice Group on Copyright of 28 June 2016, Ref. Ares(2018)1186485 (document 1) and its annex (document 1.1);
- E-mail from the Joint Research Centre of 25 October 2016 to services (Ref. Ares(2017)6256585).

Please note that you already obtained access to the second e-mail through the Joint Research Centre's reply of 20 December 2017 to your request registered under reference number GESTDEM 2017/6751.

Regarding the annex of that e-mail, a preliminary version of the Joint Research Centre's draft study with the title *The economics of online news aggregation and neighbouring rights for news publishers*, I refer to the Commission's confirmatory decision of 19 March 2018 on your request registered under reference number GESTDEM 2017/6751. I confirm that the conclusion of the Commission's assessment in the latter confirmatory decision is still valid, and that the factual and legal circumstances leading to that conclusion have not changed. Consequently, access to the annex of the e-mail from the Joint Research Centre of 25 October 2016 is partially refused based on the reasoning set out in Decision C(2018)1828.

Concerning the first e-mail listed above, dated 28 June 2016 (document 1), I am pleased to inform you that wide partial access is granted, including to its annex (document 1.1), subject only to the redaction of personal data based on Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation 1049/2001, for the reasons set out below.

Please note that parts of document 1 refer to matters falling outside the scope of your requests and have therefore been redacted.

You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

2.1. Protection of privacy and the integrity of the individual

Article 4(1)(b) of Regulation 1049/2001 provides that *the institutions shall refuse access to a document where disclosure would undermine the protection of [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.*

The e-mail of 28 June 2016 and its annex contain personal data such as names of persons⁶, e-mail addresses, office numbers or other data from which their identity can be deduced.

In its judgment in the *Bavarian Lager* case, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001⁷ (hereafter, 'Data Protection Regulation') becomes fully applicable⁸.

Article 2(a) of the Data Protection Regulation provides that '*personal data*' shall mean *any information relating to an identified or identifiable person [...]; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity.* According to the Court of Justice, *there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of "private life"*⁹.

⁶ Commission staff not forming part of senior management.

⁷ 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, page 1.

⁸ Judgment of 29 June 2010, *European Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 63.

⁹ Judgment of 20 May 2003, *Rechnungshof v Österreichischer Rundfunk and Others*, C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

The names¹⁰ of persons, e-mail addresses, office numbers as well as other data from which their identity can be deduced, undoubtedly constitute personal data in the meaning of Article 2(a) of the Data Protection Regulation.

It follows that public disclosure of the above-mentioned information would constitute processing (transfer) of personal data within the meaning of Article 8(b) of Regulation 45/2001. According to Article 8(b) of that Regulation, 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. Those two conditions are cumulative¹¹. Only if both conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 45/2001, can the processing (transfer) of personal data occur.

In its judgment in the *ClientEarth* case, the Court of Justice ruled that *whoever requests such a transfer must first establish that it is necessary. If it is demonstrated to be necessary, it is then for the institution concerned to determine that there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject. If there is no such reason, the transfer requested must be made, whereas, if there is such a reason, the institution concerned must weigh the various competing interests in order to decide on the request for access*¹². I refer also to the *Strack* case, where the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data¹³.

In your confirmatory request, you do not establish the necessity of having the data in question transferred to you. Therefore, I have to conclude that the transfer of personal data through the disclosure of the parts of the documents in question cannot be considered as fulfilling the requirements of Regulation 45/2001.

The fact that, contrary to the exceptions of Article 4(2) and (3), Article 4(1)(b) of Regulation 1049/2001 is an absolute exception which does not require the institution to balance the exception defined therein against a possible public interest in disclosure, only reinforces this conclusion.

Therefore, the use of the exception under Article 4(1)(b) of Regulation 1049/2001 is justified, as there is no need to publicly disclose the personal data in question, and it cannot be assumed that the legitimate rights of the data subjects concerned would not be prejudiced by such disclosure.

¹⁰ Judgment in *European Commission v Bavarian Lager*, cited above, EU:C:2010:378, paragraph 68.

¹¹ *Idem*, paragraphs 77-78.

¹² Judgment of 16 July 2015, *ClientEarth v European Food Safety Agency*, C-615/13 P, EU:C:2015:489, paragraph 47.

¹³ Judgment of 2 October 2014, *Strack v European Commission*, C-127/13 P, EU:C:2014:2250, paragraph 106.

3. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



For the European Commission
Martin SELMAYR
Secretary-General

Enclosures: (2)