



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate D - Jobs, Growth & Investment

The Director

Brussels,
SG.D.3/SW

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Subject: Your application for access to documents - Ref GestDem 2018/6664

Dear Sir,

We refer to your email of 11 December 2018, registered on the same day under GestDem 2018/6664, in which you make a request for access to documents.

1. Scope of your request

You request access to the following documents:

- all reports (and other notes) from meetings between the European Commission and representatives of the tobacco industry (producers, distributors, importers etc, as well as organisations and individuals that are funded by and/or work to further the interests of the tobacco industry), during 2018.

- all correspondence (including emails) between the European Commission and representatives of the tobacco industry (producers, distributors, importers etc. as well as organisations and individuals that are funded by and/or work to further the interests of the tobacco industry), during 2018.

- a list of all the above-mentioned documents (including dates, names of participants/senders/recipients and their affiliation, subject of meeting/correspondence).

You indicate that documents that had been subject to your previous request of 5 February 2018 (GestDem 2018/1205) should be excluded.

2. Identification and assessment of the concerned documents

We have identified two documents falling into the scope of your request. Their references are Ares(2018)1499946 of 19 March 2018 and Ares(2018)2408480 of 7 May 2018. They concern a correspondence of the ‘Verband der deutschen Rauchtabakindustrie c.V. (VdR)’ and the Secretary General of the Commission.

3. Protection of personal data

The documents to which you have requested access contain personal data, in particular names.

Pursuant to Article 4(1) (b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its 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 applicable legislation in this field is Regulation (EC) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC1 (‘Regulation 2018/1725’).

Article 3(1) of Regulation 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.²

In its judgment in Case C-28/08 P (*Bavarian Lager*)³, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable.⁴

Pursuant to Article 9(1)(b) of Regulation 2018/1725, ‘personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if ‘[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject’s legitimate interests might be prejudiced, establishes that it

¹ Official Journal L 205 of 21.11.2018, p. 39.

² Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

³ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59.

⁴ Whereas this judgment specifically related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests’.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

As to the handwritten parts and signatures, which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned.

5. Means of redress

In case you would disagree with the assessment that the redacted data are personal data which can only be disclosed if such disclosure is legitimate under the applicable rules on the protection of personal data, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to submit 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 Secretariat-General of the Commission at the following address:

European Commission

Secretariat-General

Unit C.1. 'Transparency, Document Management and Access to Documents'

BERL 7/076

B-1049 Bruxelles, or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

Marcel Haag

Enclosures: Documents Ares(2018)1499946 and Ares(2018)2408480