



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Director General

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Cristiano Silva Martins
Calle Belianes 1, 4/4,
Postal Code 28043,
Madrid, Spain

Advance copy by email:
ask+request-6186-85fa1bc@asktheeu.org

Subject: Your application for access to documents – GestDem No 2018/6836

Dear Mr Silva Martins,

We refer to your request registered under the above-mentioned reference number on 20 December 2018, in which you request access to documents, in accordance with Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents¹ ("Regulation 1049/2001"). We also refer to our clarification request of 16 January 2019 and to which you responded on 17 January 2019, as well as our reply dated 7 February 2019, in which we announced that an extended time limit is needed to handle your application as third parties had to be consulted.

You request access to documents which contain information on all infringement procedures and complaints in the gambling sector related to Spain registered between 7 December 2012 and 7 December 2017, and you would like to receive the data disaggregated by year, company/operator involved, province or autonomous community in Spain and content (object/reason of the complaint/infringement), or as it appears in the public records.

The Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW has identified the following documents relevant for your request:

(1) Complaint registered as CHAP 2013/00991

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, OJ L 145, 31.5.2001, p. 43.

- (2) Complaint registered as CHAP 2013/01137
- (3) Annex 1 included in the complaint registered as CHAP 2013/01137
- (4) Complaint registered as CHAP 2013/03855
- (5) Annexes 1-14 included in the complaint registered as CHAP 2013/03855
- (6) Complaint registered as CHAP 2013/01282
- (7) Annexes 1-7 included in the complaint registered as CHAP 2013/01282
- (8) EU Pilot 2013/5182 – information request to Spain of 10 July 2013
- (9) EU Pilot 2013/5182 - reply by Spain of 30 September 2013
- (10) EU Pilot 2013/5182 - reply by Spain of 7 October 2013
- (11) Letter of formal notice to Spain (NIF 2013/4325) of 27 November 2014
- (12) Spain's reply to the letter of formal notice (NIF 2013/4325) of 28 January 2015
- (13) Spain's reply to the letter of formal notice (NIF 2013/4325) of 12 May 2015
- (14) Spain's reply to the letter of formal notice (NIF 2013/4325) of 28 July 2015

The third parties have been consulted on the documents listed under points (1-7) above, and the Spanish authorities have been consulted on the documents listed under points (8-14) above.

We enclose copies of documents listed under points 1-3 and 5-7 in the language they were submitted to the European Commission, and as for documents listed under points 8-14 in Spanish (the official version of the documents).

Following the assessment of the above documents and consultation of the third parties and the Spanish authorities referred to above, the documents are organised into the following categories on the basis of the extent to which they may be disclosed:

1. Partial access after deletion of personal data

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 European Union 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/EC² ('Regulation 2018/1725').

The documents listed under points 1-3 and 5-14 above contain personal data, in particular biometric data (such as handwritten signatures), as well as other personal data of non-senior management Commission staff and non-senior national officials and private individuals, appearing therein have been redacted.

Indeed, 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.³ Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.⁴

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁵, 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.⁶

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 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.

² Official Journal L 205 of 21.11.2018, p. 39.

³ 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](#).

⁴ Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, [paragraphs 43-44](#), [ECLI:EU:T:2018:560](#).

⁵ 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.

⁶ 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.

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, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

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 signatures of Commissioners, Member States' Ministers, officials and/or private individuals, which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned.

Therefore, we are disclosing a version of the documents requested in which these personal data have been redacted.

As regards the reuse of the disclosed parts of documents 8 and 11, which originate from the European Commission, you may reuse these documents 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.

However, with regard to documents listed under points 1, 2, 3, 5, 6, 7, 9, 10, 12, 13 and 14 above which were received by the Commission from the Spanish authorities or the third parties, the disclosed parts are for information only and cannot be re-used without the agreement of the originator, who holds a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

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. The manner in which such a confirmatory application may be submitted is described further below in this letter.

2. Non-disclosure

Following consultation of the third parties on the document listed under point 4 above, I regret to inform you that access to this document cannot be granted as disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

As regards the document listed under point 4 above, the third parties claim that the document which you seek to obtain contains privileged legal advice and commercial sensitive information.

The authors of the document listed under point 4 above have consequently objected to disclosure of the document that they sent to the Commission and have motivated their position on grounds of commercial sensitive information and protection of commercial interests and legal advice pursuant to Article 4(2), first and second indent, of Regulation 1049/2001.

The exceptions laid down in Article 4(2) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the document. From your request we cannot derive any facts which would explain why the public interest in making the content of the document public would outweigh the harm disclosure would cause to the interests protected by the invoked exceptions.

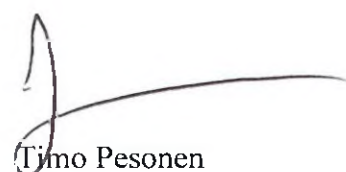
The possibility of granting partial access in accordance with Article 4(6) of Regulation (EC) No 1049/2001 has also been examined. However, this is not considered possible since the document in question is covered in its entirety by the above-mentioned exception.

In accordance with Article 7(2) of Regulation 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
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 sincerely,



Timo Pesonen

Enclosures:

Complaint registered as CHAP 2013/00991

Complaint registered as CHAP 2013/01137

Annex 1 included in the complaint registered as CHAP 2013/01137

Annexes 1-14 included in the complaint registered as CHAP 2013/03855

Complaint registered as CHAP 2013/01282

Annexes 1-7 included in the complaint registered as CHAP 2013/01282

EU Pilot 2013/5182 – information request to Spain of 10 July 2013

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