



EUROPEAN COMMISSION

Secretariat-General

Directorate C - Transparency, Efficiency & Resources
The Director

Brussels,
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By registered mail with AR

Mr Alvaro Merino
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Spain

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Subject: Your application for access to documents – GESTDEM 2018/6966

Dear Mr Merino,

I refer to your message of 26 December 2018 in which you make a request for access to documents, registered on the same day under the above-mentioned reference number. Please accept our apologies for this late reply.

1. SCOPE OF YOUR REQUEST

You are requesting access to '[a] list of all lobby meetings held by the commissioner in charge of Better Regulation, Interinstitutional Relations, the Rule of Law and the Charter of Fundamental Rights, Frans Timmermans or any other member of its Cabinet with any organisation representing churches and/or religious communities since 2014 onwards, including all emails, minutes/, reports or any other briefing papers related to all those meetings'.

As a preliminary remark, please note that according to Article 1 of the Commission decision of 25 November 2014 on the publication of information on meetings held between Members of the Commission and organisations or self-employed individuals¹, the members of the Commission shall make public information on all meetings held by them and members of their Cabinet with organisations or self-employed individuals on issues relating to policy-making and implementation in the Union.

¹ Commission decision of 25 November 2014 on the publication of information on meetings held between Members of the Commission and organisations or self-employed individuals (2014/839/EU, Euratom), Official Journal L 343, p.22.

However, in order to protect the specific character of the dialogue with churches and philosophical and non-confessional organisations, provided for in Article 17(3) of the Treaty on the Functioning of the European Union, according to Article 3 of the Commission decision of 25 November 2014², the rules and obligations stemming from the decision do not apply to meetings held in those contexts.

Nevertheless, the provisions of the above-mentioned decision apply to organisations representing churches and religious communities. Therefore, information about meetings held by the organisations representing churches and religious communities, which are registered in the transparency register, is available at the following address:

<http://ec.europa.eu/transparencyregister/public/consultation/reportControllerPager.do?action=search&categories=44&locale=en#en>.

The European Commission has identified the following documents as falling within the scope of your request:

- Invitation for a meeting addressed to the First-Vice President of the European Commission Frans Timmermans on behalf of 'La Conférence des Rabbins européens auprès des institutions européennes' and related correspondence, 5 November 2014, reference Ares(2014)3679961 (hereafter 'document 1');
- Invitation for a meeting addressed to the First-Vice President of the European Commission Frans Timmermans on behalf of the Archbishop of Canterbury, 14 January 2015, reference Ares(2015)154384 (hereafter 'document 2');
- Answer to the invitation for a meeting with the Archbishop of Canterbury, 16 January 2015, reference Ares(2015)190135 (hereafter 'document 3');
- Follow-up of the meeting between the First-Vice President of the European Commission Frans Timmermans and a representative of the European Jewish Congress and related correspondence, 12 May 2015, Ares(2015)2007576 (hereafter 'document 4');
- Invitation addressed to the First-Vice President of the European Commission Frans Timmermans on behalf of Herbert Reul (MEP) for a meeting with Cardinal Gerhard Ludwig Muller, prefect of the Congregation for the Doctrine of the Faith of the Roman Catholic Church, 12 November 2015, reference Ares(2015)5037670 (hereafter 'document 5');
- Answer to the invitation for a meeting between the First-Vice President of the European Commission Frans Timmermans and Cardinal Gerhard Ludwig Muller, 20 November 2015, reference Ares(2015)5244860 (hereafter 'document 6');
- Thank you letter from Cardinal Gerhard Ludwig Muller, 22 February 2016, reference Ares(2016)909308 (hereafter 'document 7');
- Email sent to the First-Vice President of the European Commission Frans Timmermans in relation to his visit to the Vatican City by Cardinal Gerhard Ludwig Muller, 13 July 2016, reference Ares(2016)3383412 (hereafter 'document 8');

² Commission decision of 25 November 2014 (2014/839/EU, Euratom), cited above.

- Invitation for a meeting addressed to the First-Vice President of the European Commission Frans Timmermans on behalf of His Eminence Cardinal Reinhard Marx, Archbishop of Munich and Freising, and President of the Commission of the Bishops' Conferences of the European Community (COMECE), 18 December 2015, reference Ares(2015)5959474 (hereafter 'document 9');
- Thank you letter from a representative of the World Jewish Congress, 12 June 2017, reference Ares(2017)2929237 (hereafter 'document 10');
- Thank you letter from a representative of the Commission of the Bishops' Conferences of the European Union's (COMECE) in relation to the meeting between the First-Vice President of the European Commission Frans Timmermans and Cardinal Bassetti, 3 May 2018, reference Ares(2018)2360814 (hereafter 'document 11');
- Email and documents sent by a representative of the Commission of the Bishops' Conferences of the European Union (COMECE), 28 September 2017, reference Ares(2017)4741497 (hereafter 'document 12').

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001

Following our assessment, I hereby inform you that wide partial access is granted to documents 1 to 11, subject only to the redactions of personal data, in accordance with Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001, for the reasons set out below.

As regards document 12, access is to be partially refused on the basis of Article 4(2), first indent of Regulation (EC) No 1049/2001 (protection of commercial interests of a legal person).

2.1. Protection of privacy and the integrity of the individual

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides that '[t]he 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 applicable legislation in this field is Regulation (EU) 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/EC (hereafter 'Regulation (EU) 2018/1725').³

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁴, 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.

³ Official Journal L 205 of 21.11.2018, p. 39.

⁴ Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd*, Case C-28/08 P, EU:C:2010:378, paragraph 59.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by Regulation (EU) 2018/1725. However, the case law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’. As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), ‘there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life’.⁵

Please note that the documents, to which you request access, contain the names, surnames, contact details (email addresses, telephone and office numbers), functions and signatures of people who are not considered as public figures, such as members of the board of organisations representing churches and religious communities. Furthermore, the relevant undisclosed parts of the documents contain the names, surnames and contact details of staff members of the European Commission and the European Parliament not holding any senior management position. The names, surnames and addresses of the persons concerned as well as other data from which their identity can be deduced, undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

On the contrary, the names and surnames of public figures such as Members of the European Parliament, Cardinals or the Archbishop of Canterbury, principal leader of the Church of England, present in some of the requested documents, can be disclosed.

Pursuant to Article 9(1)(b) of Regulation (EU) 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 (EU) 2018/1725, can the transmission of personal data occur.

In Case C-615/13 P (*ClientEarth*), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data.⁶ This is also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

⁵ Judgment of the Court of Justice of 20 May 2003, *Rechnungshof and Others v Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

⁶ Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Food Safety Agency*, C-615/13 P, EU:C:2015:489, paragraph 47.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes 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 subject 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 its privacy and subject it to unsolicited external contacts. As to the handwritten signatures appearing in some of the documents, which constitute biometric data, there is a risk that their disclosure would prejudice the legitimate interest of the person concerned.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the withheld 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 individual concerned would not be prejudiced by disclosure of the personal data concerned.

2.2. Protection of the commercial interests

Article 4(2), first indent of Regulation 1049/2001 stipulates that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, [...] unless there is an overriding public interest in disclosure.'

The relevant undisclosed parts of document 12, contain the names, as well as commercially sensitive information, such as views and opinions expressed by members of the Commission of the Bishops' Conferences of the European Union (COMECE) in a very specific context.

I consider that public access to the names and sensitive information provided by the Commission of the Bishops' Conferences of the European Union, would have a negative effect on their reputation and public image, thus affecting their commercial interests.

Indeed, the General Court confirmed on several occasions that the protection of a commercial undertaking's reputation can require the (partial) refusal of documents based on Article 4(2), first indent of Regulation (EC) No 1049/2001.⁷

Furthermore, the General Court found that documents, whose disclosure would seriously undermine the commercial interests of a legal person, 'contain commercially sensitive information relating, in particular, to the business strategies of the undertakings concerned or their commercial relations or where those documents contain information particular to that undertaking which reveal its expertise'.⁸

Even if the Commission of the Bishops' Conferences of the European Union is not an undertaking acting in the private interest, I note that the reputational damage mentioned above can still occur.

Based on the foregoing, I consider that there is a real and non-hypothetical risk that public access to the above-mentioned information would negatively affect the commercial interests and reputation of the Commission of the Bishops' Conferences of the European Union, in particular as it might lead to a reputational damage.

Therefore, I conclude that access to the relevant parts in document 12 has to be refused on the basis of the exception laid down in the first indent of Article 4(2) of Regulation (EC) No 1049/2001.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Please note that article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

The exceptions laid down in Article 4(2) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

In this context, I would like to refer to the judgment in the *Strack* case⁹, where the Court of Justice ruled that in order to establish the existence of an overriding public interest in transparency, it is not sufficient to merely rely on that principle and its importance. Instead, an applicant has to show why in the specific situation the principle of transparency is in some sense especially pressing and capable, therefore, of prevailing over the reasons justifying non-disclosure.¹⁰

⁷ Judgments of the General Court of 15 January 2013, *Strack v Commission*, Case T-392/07, EU:T:2013:8, paragraph 228 and of 26 April 2016, *Strack v Commission*, Case T-221/08, EU:T:2016:242, paragraph 210.

⁸ Judgments of the General Court of 5 February 2018, *PTC Therapeutics Ltd v. European Medicines Agency*, Case T-718/15, EU:T:2018:66, paragraphs 84-85 and *MSD Animal Health Innovation GmbH v European Medicines Agency*, Case T-729/15, EU:T:2018:67, paragraphs 67–68.

⁹ Judgment of the Court of Justice of 2 October 2014, *Strack v Commission*, Case C-127/13 P, EU:C:2014:2250, paragraph 128.

¹⁰ *Ibid*, paragraph 129.

As mentioned in point 2.2 of this decision, document 12 contains sensitive information the disclosure of which might lead to a reputational damage for the entity concerned.

In your application, you do not refer to any particular overriding public interest that would warrant public disclosure of the specific type of information included in any document.

Nor have I, based on my own analysis, been able to identify any elements capable of demonstrating the existence of a public interest that would override the need to protect the commercial interests of the economic operators grounded in the first indent of Article 4(2) of Regulation (EC) No 1049/2001.

The fact that the document requested was not drafted in the framework of the European Commission's legislative activities, for which the Court of Justice has acknowledged the existence of wider openness¹¹, provides further support to this conclusion.

4. PARTIAL ACCESS

Please note that partial access is granted to documents 1 to 12.

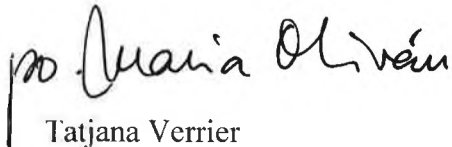
5. MEANS OF REDRESS

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, or with the assessment of the first indent of Article 4(2) of Regulation (EC) No 1049/2001, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit a confirmatory application requesting the European 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 Brussels,
or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,


Tatjana Verrier
Director

Enclosures: (12)

¹¹ Judgment of 29 June 2010, C-139/07 P, Case *Commission v Technische Glaswerke Ilmenau*, EU:C:2010:376), paragraph 60.