



EUROPEAN COMMISSION

Secretariat-General

Directorate C - Transparency, Efficiency & Resources
The Director

Brussels,
SGC.1/AF

By registered mail with AR

Ms Josefina Marti
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Subject: Your application for access to documents – GESTDEM 2019/0741

Dear Ms Marti,

I refer to your letter of 7 February 2019 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]ll documents - including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, operational conclusions, lines to take, e-mails, and presentations – produced, exchanged and related to the following meetings between EKD-Büro Brüssel / EKD-Office Brussels and:

- '- Christiane Canenbley, Cabinet member of Jean-Claude Juncker, on 22/05/2018
- Martin Selmayr, Secretary-General, on 22/05/2018
- Pauline Rouch, Cabinet member of Jean-Claude Juncker, on 08/12/2016
- Martin Selmayr, Cabinet member of Jean-Claude Juncker, on 15/01/2016
- Martin Selmayr, Cabinet member of Jean-Claude Juncker, 20/01/2015'

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

- Thank you letter and invitation for a meeting from EKD of 4 February 2015, Reference Ares(2015) 452026.

- Reply to invitation for a meeting from Martin Selmayr of 6 February 2015, Reference Ares(2015) 832364.

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

Following our assessment, I hereby inform you that wide partial access is granted to the requested documents, 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.

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’.

In its judgment in Case C-28/08 P (*Bavarian Lager*)¹, 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.

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’).²

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 [...]’.

Please note that the documents, to which you are requesting access, contain the names, surnames, contact details (email addresses, telephone and office numbers) and functions of people who are not considered as public figures, such as members of ‘EDK – Office Brussels’ and staff members of the European Commission not holding any senior management positions. The documents also contain biometric data.

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

¹ 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.

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

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.³ 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.

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.

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

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

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.

³ 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.

4. PARTIAL ACCESS

Please note that partial access is granted to the requested documents.

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 (EC) No 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 Brussels,

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

Yours faithfully,



Tatjana VERRIER

Enclosures: (2)