



## EUROPEAN COMMISSION

LEGAL SERVICE  
The Director General

Brussels, 28<sup>th</sup> March 2019

**By email**

Mr Fred Logue  
8/10 Coke Lane  
Smithfield  
Dublin 7  
Ireland

[ask+request-6374-  
26379b50@asktheeu.org](mailto:ask+request-6374-26379b50@asktheeu.org)

**Subject: Request for access to documents**

**Ref.:** Your request of 8 February 2019 registered under reference GestDem 2019/0760

Dear Mr Logue,

I refer to your above-mentioned application by which you request, under Regulation (EC) No 1049/2001<sup>1</sup>, "*Written submission of the European Commission and the German Government in case C-204/09 (Flachglas Torgau)*"<sup>2</sup>.

### **1. WRITTEN OBSERVATIONS SUBMITTED BY THE EUROPEAN COMMISSION**

Regarding the written submissions lodged by the European Commission, I am pleased to inform you that, after a concrete assessment, full access can be granted to them in accordance with Regulation (EC) No 1049/2001.

Accordingly, you will find attached a copy of this document in German, the language of the proceedings, next to a French translation. Please note that the handwritten signatures of the Commission's officials (on the last page of the German version) have been blanked out, since they constitute personal data to be protected, as it will be explained below.

You may reuse the disclosed 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 these documents. Please note that the Commission does not assume liability stemming from the reuse.

---

<sup>1</sup> 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 L145, 31.05.2001, page 43).

<sup>2</sup> Judgment of the Court of Justice of 14 February 2012, ECLI:EU:C:2012:71.

## 2. WRITTEN OBSERVATIONS SUBMITTED BY GERMANY

The Legal Service consulted the Government of Germany on the disclosure of its written observations in this Case. Agreement to the disclosure of the respective document has been granted in accordance with Article 4(4) of Regulation (EC) No 1049/2001.

Consequently, you will find enclosed a copy of the concerned document. However, please note that the name and the handwritten signatures of the Court's official, appearing on the first page, as well as the handwritten signatures of the lawyers representing the Member States on the last page have been redacted since they constitute personal data to be protected, as will be explained below.

Please note that the disclosed documents were transmitted by the Court of Justice to the Commission in its capacity as participant to the Court proceedings at stake and access to them is granted for information only. They 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.

## 3. REFUSAL OF PERSONAL DATA

As stated above, the name of the Court's official and the handwritten signatures of the institutions' officials as well as of the lawyers representing Germany have been redacted since they constitute information covered under the exception provided for in Article 4(1)(b) ("*protection of personal data*")<sup>3</sup> of Regulation (EC) No 1049/2001, in accordance also with the European Union's legislation regarding the protection of personal data.

As the Court of Justice has ruled in its judgment in Case C-28/08P (*Bavarian Lager*)<sup>4</sup>, when access to documents is requested containing personal data, the Data Protection Regulation, *i.e.* Regulation (EU) 2018/1725<sup>5</sup>, becomes fully applicable.

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data "*means any information relating to an identified or identifiable natural person [...]*". In its judgment in Case C-465/00 the Court has confirmed that "*there is no reason of principle to justify excluding activities of a professional nature [...] from the notion of private life*"<sup>6</sup>. More particularly, regarding the personal data of the officials of the institutions, the General Court has confirmed, in its recent judgment of 19 September 2018, that the information such as names, signatures, functions, telephone numbers and other information pertaining to staff members of an institution fall within

---

<sup>3</sup> "*The institutions shall refuse access to a document where disclosure would undermine the protection of: [...] (b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data*".

<sup>4</sup> Judgment of 29 June 2010 in Case C-28/08P, *European Commission v The Bavarian Lager Co. Ltd.*, ECLI:EU:C:2010:378, paragraphs 59 and 63.

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.

<sup>5</sup> Regulation 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, Official Journal L 205 of 21.11.2018, page 39.

<sup>6</sup> 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.

the notion of "*private life*", regardless of whether this data is registered in the context of a professional activity or not. Therefore, the refused information constitutes personal data in the meaning of Article 3(1) of Regulation 2018/1725 and must be protected<sup>7</sup>.

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.

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.

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 individuals concerned would not be prejudiced by disclosure of the personal data concerned.

Please note that the exception of Article 4(1)(b) has an absolute character and does not envisage the possibility of demonstrating the existence of an overriding public interest.

#### **4. MEANS OF REDRESS**

Should you wish the position regarding the refusal of personal data to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretary-General at the following address:

---

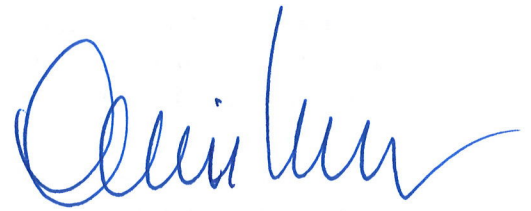
<sup>7</sup> Judgment of General Court of 19 September 2018 *Chambre de commerce and d'industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission*, T-39/17, ECLI:EU:T:2018:560, paragraphs 37, 38 and 43.

European Commission  
Secretary-General  
Transparency, Document Management & Access to Documents (SG.C.1)  
BERL 5/282  
B-1049 Brussels

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

The Secretary General will inform you of the result of this review within 15 working days from the date of registration of your request. You will either be given access or your request will be rejected in which case you will be informed of how you can take further action.

Yours sincerely,



Luis ROMERO REQUENA

Attachments: 3