



EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels, 28.2.2019

By e-mail

Ms Marta Moretti
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20121 Milan
Italy

ask+request-6392-df817f38@asktheeu.org

Subject: Request for access to documents

Ref.: Your application for access to documents registered under reference GestDem 2019/0881

Dear Ms Moretti,

I refer to your request of 13 February 2019 for access to documents, under Regulation (EC) No 1049/2001¹, concerning the Commission's written observations in Case C-490/16, *A.S. v. Republic of Slovenia*².

1. ASSESSMENT

After a concrete assessment of the requested document, I am pleased to inform you that, in accordance with Regulation (EC) No 1049/2001, full access can be granted to it, with the exception of the hand-written signatures of the Commission's agents.

This information constitutes personal data that must be protected under the exception provided for in Article 4(1)(b) ("*protection of personal data*")³ of Regulation (EC) No 1049/2001 in accordance with the European Union legislation regarding the protection of personal data.

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, 31.05.2001, page 43).

² Judgment of the Court of 26 July 2017, ECLI:EU:C:2017:585.

³ "*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*".

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/EC⁴ ("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.⁵

In its judgment in Case C-28/08P (*Bavarian Lager*)⁶, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁷. In particular, regarding the deletion of the handwritten signatures of the institutions' agents, please note that the General Court has confirmed in its recent judgment of 19 September 2018 that the information such as names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution fall within the notion of "*private life*" regardless of whether this data is registered in the context of a professional activity. Therefore, the handwritten signatures constitute personal data in the meaning of Article 3(1) of Regulation 2018/1725 and must be protected⁸.

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

⁴ OJ L 205 of 21.11.2018, page 39.

⁵ 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*, ECLI:EU:C:2017:994, paragraphs 33 to 35.

⁶ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd.*, ECLI:EU:C:2010:378, paragraph 59.

⁷ *Bavarian Lager* judgment, paragraph 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.

⁸ Judgment of 19 September 2018 in case T-39/17, *Chambre de commerce and d'industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission*, ECLI:EU:T:2018:560, paragraphs 37, 38 and 43.

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.

Accordingly, you will find attached a copy of the Commission's written observations in Slovenian, the language of the proceedings, where the referred personal data has been redacted, as well as a copy of the French translation, the only other linguistic version available.

2. REUSE OF THE DOCUMENTS

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 the documents. Please note that the Commission does not assume liability stemming from the reuse.

3. MEANS OF REDRESS

Should you wish this position 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:

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

or by email to: 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,

A handwritten signature in blue ink, appearing to read 'Luis Romero Requena', with a stylized, cursive script.

Luis ROMERO REQUENA

Attachments: 2