



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP
AND SMES
Innovation and Advanced Manufacturing
Innovation Policy and Investment for Growth

Brussels,
GROW.F.1/MN

Ms Vicky Cann
CEO
Rue d'Edimbourg 26
1050 Brussels

**Subject: Your application for access to documents - Ref GestDem No
2019/1311**

Dear Ms Cann,

We refer to your e-mail dated 06/03/2019 in which you make a request for access to documents, registered on 07/03/2019 under the above-mentioned reference number.

You request access to details of all lobbying on the topic of Important Projects of Common European Interest, since 13 September 2017 when the Commission published its communication "Investing in a smart, innovative and sustainable Industry: A renewed EU Industrial Policy Strategy".

Specifically you would like to receive all:

- a list of all such lobby meetings including date and attendees
- agendas and minutes of these lobby meetings
- email and correspondence exchanges on Important Projects of Common European Interest
- position papers and discussion papers on Important Projects of Common European Interest

By decision of 30 January 2018, the Commission had set up the Strategic Forum for Important Projects of Common European Interest ("the expert group"). The mandate of the expert group is to facilitate agreements between public authorities and key stakeholders from several Member States for taking forward new Important Projects of

Common European Interest and build a common vision at Union level for joint, well-coordinated efforts and investments in key value chains.

The expert group has 47 Members, including 1. Member States' authorities; 2. Other public entities; 3. Individuals appointed in a personal capacity (type A); and 4. Organisations representing the interests of academia, finance, industry, SMEs and employees (type C).

The expert group acts in compliance with the Commission's horizontal rules on expert groups ('the horizontal rules') and is chaired by the Director General of Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs ("DG GROW"). The expert group met five times on 30/05/2018, 25/06/2018, 15/10/2018, 13/11/2018 and 29/01/2019. Minutes, agendas and other documents pertaining to this group's meetings are publicly accessible at the Register of Commission expert groups at the following link: <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3583>.

The minutes of bilateral meetings with industry representatives in which the topic of Important Projects of Common European Interest was discussed, as matching the scope of your request are listed in the document register enclosed with this letter.

Contacts and correspondence with parties in the context of an investigation under the state aid rules on public financing of Important Projects of Common European Interest are not considered within the scope of your request.

Concerning meetings and correspondence with industry representatives relating to your request, any additional list of documents will be sent as soon as possible, as more time is needed to identify potentially relevant documents and any confidential information.

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 (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 ('Regulation 2018/1725').

The documents to which you request access contain personal data, in particular names, functions and contact details of Commission staff and stakeholders' representatives.

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.¹

¹ 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](https://eur-lex.europa.eu/eli/jb/2017/994).

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.².

In its judgment in Case C-28/08 P (Bavarian Lager)³, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁴.

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 and subject them to unsolicited external contacts.

² 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.

³ 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.

⁴ 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.

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.

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

Yours faithfully,

Mark Nicklas
Head of Unit