



Brussels, *25.06.2019*
SG.C.1/AF/rc -

By registered mail with AR

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**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001¹**

**Subject: Your application for access to documents under Regulation (EC) No
1049/2001 - GESTDEM 2019/2752 and 2780**

Dear Sirs,

I refer to your emails of 10 and 11 May 2019, in which you submit a request for access to documents on behalf of Access Info Europe, under the above-mentioned reference numbers.

1. SCOPE OF YOUR REQUEST

In your applications, you requested access to documents that provide details on expenditure listed as ‘miscellaneous costs’ related to the mission of the President of the European Commission Jean-Claude Juncker to Buenos Aires between 28 November and 2 December 2018.

¹ Official Journal L 345 of 29.12.2001, p. 94.

More specifically under request referenced under number GESTDEM 2019/2780, you requested access to, I quote:

'[...] documents that provide details on expenditure listed as "miscellaneous costs" of Euros 8320 for the mission by Commission President Jean Claude Juncker to Buenos Aires between 28 November and 2 December 2018 as published here:

http://ec.europa.eu/transparencyinitiative/meetings/mission.do?host=829436d0-1850-424f-aebe-6dd76c793be2&missionsperiod=2018_5

[You] request that the documents provided contain sufficient details to be able to identify for each type of miscellaneous cost (what the money was spent on) and the total amount (in local currency and/or in Euros) for each item.'

Under request referenced under number GESTDEM 2019/2752, you requested access to:

'[...] documents further detailing the items listed as "miscellaneous costs" for the mission by Commission President Jean Claude Juncker to Buenos Aires between the 28 November and 2 December 2018. [You] request that the information provided:

c) Be in the form of the documents released in response to request GestDem 2016/6050

d) Include information in the level of detail made available to commissioners when submitting mission orders, presented in pages 12-18 of first document released in response to request GestDem 2015/6011:

The MiPS (Mission Processing System) Guide to How to Introduce a Mission Order: https://www.asktheeu.org/en/request/database_containing_commissioner. [...].'

Following a request by the Secretariat-General of 22 May 2019, you clarified that both requests were submitted on behalf of Access Info Europe.

Therefore, this is joined reply referring to the two applications referenced under numbers GESTDEM 2019/2780 and GESTDEM 2019/2752.

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

As a preliminary point, I would like to note that, in accordance with the code of conduct for the Members of the European Commission², Commissioners have the obligation 'to conduct missions in compliance with the rules in the Financial Regulation, the internal rules on the implementation of the general budget of the European Union, the Guide to Missions and the rules set out in Annex 2. A mission is defined as travel in the exercise of his or her duties by a Member away from the Commission's place of work. [...].'

² Commission Decision of 31.1.2018, C(2018)700 final, Article 6(2).

Moreover, the code of conduct for the Members of the European Commission provides that '[f]or reasons of transparency, the [European] Commission will publish an overview of mission expenses per Member every two months covering all missions undertaken unless publication of this information would undermine the protection of the public interest as regards public security, defence and military matters, international relations or the financial, monetary or economic policy of the Union or a Member State.'³

The code of conduct entered into force on 1 February 2018. Accordingly, since 28 February 2018, the European Commission has been proactively publishing information pertaining to the mission costs of the Members of the European Commission every two months, thus contributing to transparency.

Against this background, the information pertaining to the mission costs of President Jean-Claude Juncker for the mentioned period is available under the link below:

http://ec.europa.eu/transparencyinitiative/meetings/mission.do?host=829436d0-1850-424f-aebe-6dd76c793be2&missionsperiod=2018_5.

You request access to documents further detailing the items listed as 'miscellaneous costs' for the mission of the President of the European Commission Jean-Claude Juncker to Buenos Aires between 28 November 2018 and 2 December 2018.

However, I regret to inform you that the documents within the specific category of 'miscellaneous costs' contain personal data and can therefore not be disclosed, as they are protected in their entirety under the exception for the protection of privacy and the integrity of the individual which is laid down in Article 4(1)(b) 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.'

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 (hereafter 'Regulation (EU) 2018/1725').

In the recent *Psara* judgment, the General Court reiterated that Article 4(1)(b) 'is an indivisible provision [which] requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, in particular with

³ *Ibid.*

⁴ Official Journal L 205 of 21.11.2018, p. 39.

Regulation No 45/2001' and that '[it] establishes a specific and reinforced system of protection of a person whose personal data could, in certain cases, be communicated to the public [...]'.⁵

Furthermore, the General Court reaffirmed that no automatic priority can be conferred on the objective of transparency over the right to protection of personal data and that '[t]he fact that data concerning the persons in question are closely linked to public data on those persons [...] does not mean at all that those data can no longer be characterised as personal data, within the meaning of Article 2(a) of Regulation No 45/2001'.⁶

Notwithstanding the fact that this judgment referred to Regulation (EC) No 45/2001, it applies by analogy to Regulation (EU) 2018/1725, as, in principle, the rest of the case law pertaining to the former.

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person [...]'. The Court of Justice ruled that any information that, due to its content, purpose or effect, is linked to a particular person, qualifies as personal data.⁷

In the *Rechnungshof* case law, the Court of Justice further confirmed that 'there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life'.⁸

The General Court also stressed that '[...] derogations from the protection of personal data must be interpreted strictly'.⁹

The documents falling under the scope of your requests contain personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

The public disclosure of this personal data would constitute processing (transfer) of personal data within the meaning of Article 9(1)(b) of Regulation (EU) 2018/1725.

Pursuant to this provision, 'personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if [...] the 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'.

⁵ Judgment of the General Court of 25 September 2018, *Maria Psara and Others v European Parliament*, (hereafter 'the Psara judgment') T-639/15 to T-666/15 and T-94/16, EU:T:2018:602, paragraph 65.

⁶ *Psara* judgment, paragraphs 91 and 52.

⁷ Judgment of the Court of Justice of 20 December 2017, C-434/16, *Peter Novak v Data Protection Commissioner*, EU:T:2018:560, paragraphs 33-35

⁸ Judgment of the Court of Justice of 20 May 2003, C-465/00, C-138/01 and C-139/01, *Rechnungshof v Österreichischer Rundfunk and others*, EU:C:2003:294, paragraph 73.

⁹ *Psara* judgment, *op. cit.*, paragraph 68.

Only if both of 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.

According to Article 9(1)(b) of Regulation (EU) 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 subjects' legitimate interests might be prejudiced.

Therefore, I conclude that the transfer of personal data contained in the requested documents does not fulfil the requirement of lawfulness provided for in Article 5 of Regulation (EU) 2018/1725.

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.

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.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions laid down in 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.

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

4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, I have considered the possibility of granting partial access to the documents requested. However, for the reasons explained above, no meaningful partial access is possible without undermining

the interest of privacy and the integrity of the individual protected under Article 4(1)(b) of Regulation (EC) No 1049/2001.

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
Director