Subject: Your application for access to documents – Ref GestDem No 2019/5058

Dear Mr Nielsen,

I refer to your request for access to documents of 30 August 2019, as registered on the same date under the following reference number: 2019/5058.

Your application concerns the following documents sent by Austria, Germany, Denmark, Sweden and Norway to the Commission as of 2018 to justify the prolongation of temporary border control at internal borders.

Austria:
Letter of 9 April 2018 – ref Ares 6921356
Letter of 10 October 2018 – ref Ares 6921356
Letter of 8 April 2019 – ref Ares 6921356

Denmark
Letter of 13 April 2018 – ref Ares 6921356
Letter of 12 October 2018 – ref Ares 6921356
Letter of 12 April 2019 – ref Ares 6921356

Germany:
Letter of 12 April 2018 – ref Ares 6921356
Letter of 12 October 2018 – 6921356
Letter of 11 April 2019 – ref Ares 6921356

Norway:

By registered letter with acknowledgment of receipt

Nikolaj Nielsen
EUobserver
Rue Montoyer / Montoyerstraat 18B
1000 Brussels
Belgium

Advance copy by e-mail: ask+request-7247-d74565a8@asktheeu.org
The Commission had received these documents from the Member States concerned, which have been consulted. The Member States concerned have agreed to disclose the annexed documents.

The documents to which you request access contain personal data, in particular handwritten signatures. 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/EC1 (‘Regulation 2018/1725’).

In particular, 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.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

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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.
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.

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. Therefore, you will find the disclosed documents redacted.

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-xxxxxxx@xx.xxxxxx.xx

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.
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Yours sincerely,

[Signature]
Victoria AMICI
Head of Unit

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