



EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels, 13 August 2020

By email

Mr Arun Dohle
Against Child Trafficking
c/o Easy Start Office
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Netherlands

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Subject: Request for access to documents

Ref.: Your request of 19th June 2020, registered on 22nd June 2020 under reference GestDem 2020/3778

Dear Mr Dohle,

I refer to your above-referenced request under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹, by which you request “*the draft letter of Mr. Van Loon to the candidate countries about the accession to the Hague Conventions, (...) the legal opinion JUR(2003)70079 and any other documents or correspondence related to this draft letter*”.

1. IDENTIFICATION OF THE DOCUMENTS

The Legal Service has identified the following documents as matching the terms of your request:

1. The legal opinion (reference JUR(2003)70079) of the Legal Service of 21 February 2003;
2. The draft letter (reference 21373(03)VL/WZ) of Mr. Van Loon to the candidate countries about the accession to the Hague Conventions of 14 February 2003.

Please be informed that the Legal Service did not identify other documents matching the terms of your request.

¹ OJ L 145, 31.05.2001, page 43.

2. ASSESSMENT OF DOCUMENT 1

After a concrete assessment of the legal opinion of the Legal Service, I am pleased to inform you that access can be granted with the exception of some personal data, covered by the exception laid down in Article 4(1)(b) of Regulation (EC) No 1049/2001, as will be explained below. Accordingly, please find enclosed a copy of the document requested in French, expunged of personal data.

3. ASSESSMENT OF DOCUMENT 2

As far as the documents of the other parties are concerned, in accordance with Article 4(4) of Regulation (EC) No 1049/2001, the Commission has consulted the authors of the respective document on their disclosure.

Following these consultation, I would like to inform you that the Hague Conference has agreed to the disclosure of the draft letter of Mr. Van Loon of the 14 February 2003. Accordingly, please find enclosed a copy of the document requested in English.

4. REFUSAL OF PERSONAL DATA

According to Article 4(1)(b) of Regulation (EC) No 1049/2001 "*[t]he 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 refused information concerning the initials, the handwritten signature and the contact details of the Commission's officials, as well as the names of the Commission's officials not having the function of senior management staff (in document 1) constitutes personal data, which must be protected under Regulation (EC) No 1049/2001 in accordance also with the European Union legislation regarding the protection of personal data.

As the Court of Justice has ruled, when access to documents containing personal data is requested, the Data Protection Regulation, i.e. Regulation (EU) 2018/1725², becomes fully applicable³.

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 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.⁴

² 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 (OJ L 205 of 21.11.2018, page 39).

³ Judgment of the Court of Justice of 29 June 2010, Case C-28/08 P, *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 (EU) 2018/1725.

⁴ Judgment of the Court of Justice of 20 December 2017, Case C-434/16, *Peter Nowak v Data Protection Commissioner*, ECLI:EU:C:2017:994, paragraphs 33-35.

With regard to the personal data such as names, signatures, functions, telephone numbers and other information relating to the institutions officials, the General Court has recognised in its judgment in Case T-39/17 that they fall within the notion of "private life" regardless of whether this data is registered in the context of a professional activity⁵ and, therefore, it constitutes personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

Consequently, the above indicated data concerning the Commission's officials has been redacted.

Pursuant to Article 9(1)(b) of Regulation (EU) 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 met 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 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 subject 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 above-mentioned 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.

⁵ Judgment of the General Court of 19 September 2018, Case T-39/17, *Chambre de commerce et d'industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission*, ECLI:EU:T:2018:560, paragraphs 37, 38 and 43.

5. REUSE OF THE DOCUMENTS

You may reuse document 1 free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort its original meaning or message. Please note that the Commission does not assume liability stemming from the reuse.

Please note that document 2 was sent by the Hague Conference to the Commission. Access to it is granted for information only and it cannot be re-used without the agreement of the originators, who may hold the copyright on it. It does not reflect the position of the Commission and cannot be quoted as such.

6. 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 Secretariat-General at the address below:

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 sincerely,

(signed electronically)

p.p. Karen BANKS

Daniel CALLEJA CRESPO

Attachments: 2