



EUROPEAN COMMISSION

Brussels, 15.2.2019  
C(2019) 1457 final

[REDACTED]  
[REDACTED]  
[REDACTED] Hassloch  
Germany

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE  
IMPLEMENTING RULES TO REGULATION (EC) NO 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under  
Regulation (EC) No 1049/2001 - GESTDEM 2018/5310**

Dear [REDACTED]

I refer to your e-mail of 19 November 2018, registered on the next day, in which you lodged a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>2</sup> (hereafter ‘Regulation (EC) No 1049/2001’).

**1. SCOPE OF YOUR APPLICATION**

In your initial application dated 9 October 2018, addressed to the Directorate-General for Taxation and Customs Union and registered under the reference number GESTDEM 2018/5310, you requested access to ‘documents containing the following information:

- 1) a list of meetings and correspondences that Commissioner Moscovici, members of his Cabinet or representatives of DG TAXUD had between March 2013 and today with business representatives insofar as these [m]eetings/correspondences related to the rules of origin verification procedures (ARTICLE 3.21 on “Rules of origin and origin procedures”) in the EU-Japan trade agreement<sup>3</sup>;
- 2) minutes and other reports of these [m]eetings’.

<sup>1</sup> Official Journal L 345, 29.12.2001, p. 94.

<sup>2</sup> Official Journal L 145, 31.05.2001, p. 43.

<sup>3</sup> <http://ec.europa.eu/trade/policy/in-focus/eu-japan-economic-partnership-agreement/>.

In its initial reply dated 15 November 2018, the Directorate-General for Taxation and Customs Union informed you that the European Commission did not hold any documents that would correspond to the description given in your application.

In your confirmatory application, you question the absence of the requested documents and you refer, in particular, to a presentation given by a representative of the Directorate-General for Trade at the conference '27. Deutscher Zollrechtstag' in June 2015, where 'Japan was mentioned'. You also highlight that 'this topic caused some discussions among the participants'.

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001**

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the relevant Directorate-General at the initial stage.

Against this background, the European Commission has carried out a renewed, thorough search for documents that would fall under the scope of your confirmatory application, as described above.

With regard to the requested documents relating to meetings between Commissioner Moscovici and/or Members of his Cabinet, I would like to inform that, as Mr Moscovici took up his duties as Commissioner for Economic and Financial Affairs, Taxation and Customs on 1 November 2014, a renewed search for such documents could be carried out only from that date.

Following this renewed search, the European Commission has identified the following two documents that correspond to the description given in your confirmatory application:

- minutes of a meeting held on 16 July 2018 between representatives of the Directorate-General for Taxation and Customs Union and of the Directorate-General for Trade and representatives of the chemical industry (hereafter 'document 1');
- a document entitled 'Cefic's proposal for an alternative wording on Origin verification and origin statement in EU FTAs' originating from the European Chemical Industry Council (hereafter 'document 2'). This document had been handed over to the representatives of the European Commission in the context of this meeting and was attached to the meeting minutes.

Both documents are registered under reference Ares(2018)3994193.

Taking account of the opinion of the consulted third party, I can inform you that:

- wide partial access is granted to document 1, subject only to the redaction of personal data on the basis of the exception of Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001;
- full access is granted to document 2.

With regard to document 1 containing meeting minutes, I would like to stress that these minutes, which were originally drawn up for exclusively internal use under the responsibility of the relevant service of the European Commission (i.e. the relevant unit in the Directorate-General for Trade, a representative of which drafted these minutes), reflect solely the author's interpretation of the interventions made at a specific moment in time and do not set out any official position of the European Commission. Moreover, I would like to specify that the staff member of the company BASF who participated in the meeting did so in the capacity of a member of the European Chemical Industry Council and not as a representative of the company concerned.

Please find copies of the above-mentioned documents enclosed with this decision.

With regard to the requested documents relating to meetings between Commissioner Moscovici and/or Members of his Cabinet and business representatives as well as the list of meetings, I confirm the initial reply of the Directorate-General for Taxation and Customs Union, according to which no such documents exist.

There are actually no documents relating to meetings between Commissioner Moscovici and/or Members of his Cabinet with business representatives on issues related to Article 3.21 of the EU-Japan Economic Partnership agreement. The requested list of meetings does not exist either.

As specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution. Given that the European Commission does not hold any documents other than documents 1 and 2 falling within the scope of your request, it is not in a position to handle your confirmatory application in this regard.

## **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'.

In its judgment in Case C-28/08 P (*Bavarian Lager*)<sup>4</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, 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<sup>5</sup> (hereafter 'Regulation (EC) No 45/2001') becomes fully applicable.

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<sup>4</sup> Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd* (hereafter referred to as '*European Commission v The Bavarian Lager* judgment') C-28/08 P, EU:C:2010:378, paragraph 59.

<sup>5</sup> Official Journal L 8 of 12.1.2001, page 1.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by 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<sup>6</sup> (hereafter ‘Regulation (EU) 2018/1725’).

However, the case law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

In the above-mentioned judgment, the Court stated that Article 4(1)(b) of Regulation (EC) No 1049/2001 ‘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, and in particular with [...] [the Data Protection] Regulation’.<sup>7</sup>

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’.

As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), ‘there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life’.<sup>8</sup>

Document 1 contains personal data such as the names, e-mail addresses and phone numbers of persons who do not form part of the senior management of the European Commission as well as of individuals who are representatives of third parties.

The names<sup>9</sup> of the persons concerned as well as other data from which their identity can be deduced undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

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’.

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<sup>6</sup> Official Journal L 205 of 21.11.2018, p. 39.

<sup>7</sup> *European Commission v The Bavarian Lager judgment*, cited above, paragraph 59.

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

<sup>9</sup> *European Commission v The Bavarian Lager judgment*, cited above, paragraph 68.

Only if 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.

In Case C-615/13 P (*ClientEarth*), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data.<sup>10</sup> This is also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes 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 confirmatory application, 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.

Notwithstanding the above, there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by the 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 individuals concerned would not be prejudiced by the disclosure of the personal data concerned.

Please note that Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001 is an absolute exception and does not need to be balanced against any possible overriding public interest in disclosure.

### **3. PARTIAL ACCESS**

Wide partial access is hereby granted to document 1, as set out above.

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<sup>10</sup> Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Food Safety Agency*, C-615/13 P, EU:C:2015:489, paragraph 47.

#### 4. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



*For the Commission  
Martin Selmayr  
Secretary-General*

Enclosures: (2)